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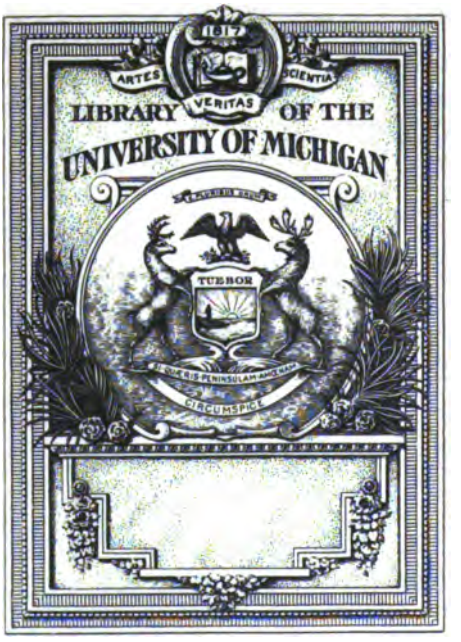

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STATE OF NEW YORK

MINUTES AND TESTIMONY

OF THE

Joint Legislative Committee

Appointed to Investigate the

Public Service Commissions

(Authorized by Joint Resolution of January 21, 1915, and continued by Joint Resolution of April 24, 1915; further continued by Joint Resolution January 20, 1916, and March 6, 1916)

VOLUME IV

TRANSMITTED TO THE LEGISLATURE MARCH 30, 1916

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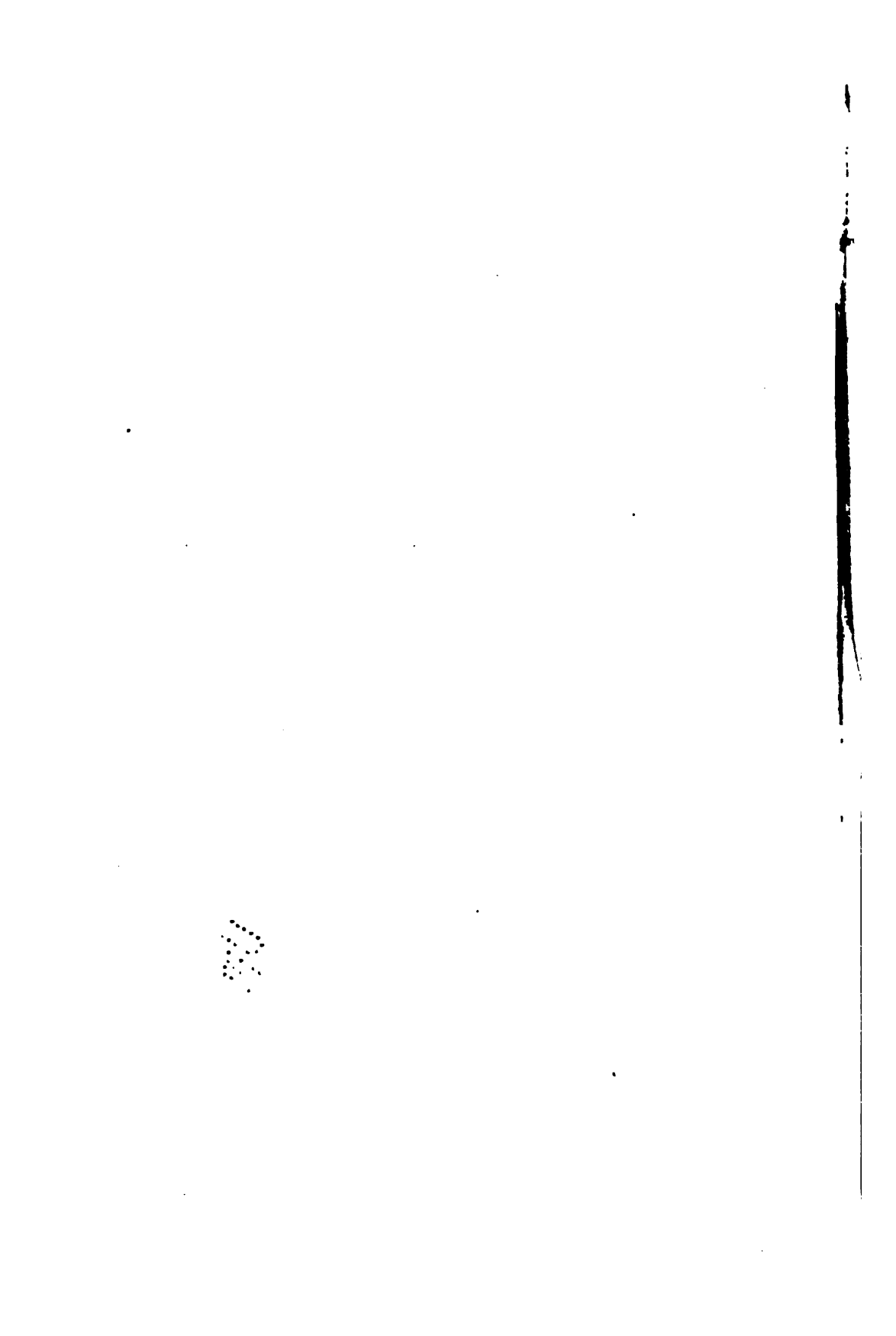

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Committee organized at the Hotel Biltmore, New York, on June 24, 1915.

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TESTIMONY

MARCH 1, 1916 — 11:46 A. M.

NEW YORK COUNTY LAWYERS' ASSOCIATION BOARD ROOM,
165 Broadway, New York City.

The Committee was called to order, pursuant to adjournment, Chairman Thompson presiding.

Quorum present.

Chairman Thompson.— The Committee will come to order.

Mr. Moss.— Mr. Hershfield.

ABRAHAM HERSCHFIELD, being recalled, testified as follows:

By Mr. Moss:

Q. We have requested you to produce papers in connection with the Fleischmann case, so-called. Have you done so? A. I produce the record, yes, sir.

Q. May I see it? A. (Witness hands book to counsel.)

Q. The printed papers on appeal show three actions. The first is Jefferson M. Levy against George B. McClellan, Herman A. Metz, and others, as members of the Board of Estimate and Apportionment. The second action is David Meyer against the same parties. The third action is Fleischmann Realty and Construction Company against George B. McClellan, Herman A. Metz, and others, comprising the Board of Estimate and Apportionment, and William R. Willcox and others, as members of the Public Service Commission. Robert F. Wagner for Jefferson M. Levy; Alonzo G. McLaughlin and Matthew W. Wood for David Meyer; Hays & Hershfield for the Fleischmann Company; Francis K. Pendleton, Corporation Counsel; George S. Coleman for the Public Service Commission. I don't find that the Interborough Railroad was

a party to either of those actions. Is that your recollection? A. Decidedly not.

Q. Are these taxpayers' actions? A. Ours was. I presume the others were.

Q. The complaint in the Levy case is dated June 11, 1908, and asks for judgment in enjoining and restraining the Board of Estimate and Apportionment from approving and certifying any of the contracts specified in paragraph 3 of the Complaint, which was for the Fourth Avenue Subway in Brooklyn, and restraining them from authorizing the issue of any corporate stock to pay therefor, etc. Now, I understand the point raised here was the debt limit? A. Yes, sir; the ascertainment of the debt limit was the purpose of all these actions.

Q. Yes; now, do you recall by whom your firm was employed? A. You mean who the plaintiff was?

Q. No— A. No. Mr. Nicoll, as I testified last time.

Q. And Mr. Nicoll acted for whom? A. Mr. Nicoll was our client. I never asked him whom he acted for, nor did I know at any time.

Q. Did anyone in your firm ask him so far as you know? A. I was the only one who had the interviews with him.

Q. Did you render your bill to Mr. Nicoll personally? A. Never rendered a bill.

Q. Whose check did you receive? A. I don't know that we received a check.

Q. Did you receive $10,000? A. About that. I don't know the exact amount. I have been unable to find a record, after having made a search.

Q. You had no record in your office? A. This is seven or eight years ago.

Q. You have no record in your office that you can find, which will show you exactly what you received, and from whom? A. I have not. I spent the best part of yesterday looking for it, with the assistance of my bookkeeper. Some of our old books are mislaid and gone. We don't save them.

Q. Is there any record on your books showing to whom you charged the work? A. Never charged it to anybody. It is not work which we would charge to anybody. We don't have charge

books, like sales books in a mercantile office. There was no one to charge it to. Nominally the Fleischmann Realty Company was the plaintiff.

Q. Did you have any conferences with the officers of the Fleischmann Realty Company about the bringing of this action? A. We certainly did.

Q. What were they? With whom and what were those conferences? A. We got permission from them to present them in a suit. That is all I know. The details I don't recall, after a lapse of seven or eight years.

Q. Did you ever render them a bill? A. Not that I know of.

Q. Receive any money from them for disbursements? A. I don't think so.

Q. Were the disbursements carried in your office, but adjusted at the end by Mr. Nicoll? A. I think they were.

Q. Do you remember what was approximately the amount of those disbursements? A. I have no notion. There were none, I should think, other than printing.

Q. During the progress of the action, did you have conferences with the attorneys for the other plaintiffs? A. Personally, no.

Q. Did your office, so far as you are informed? A. We had conferences with Mr. Metz, and conferences with others, but I have no recollection of them.

Q. Were these three actions proceeding with one common purpose, or did they proceed separately? A. There was a variance of opinion, which I think I can make clear to you.

Q. Yes, please. If you have any statement that you would like to make in your own way, we would be glad to have it. A. This is a statement prepared by Mr. Hays, who had intimate charge of the action. I had no charge of the action whatever.

Q. We don't want to put any responsibility on you, Mr. Herschfield. We just want the facts. A. The suit of Fleischmann Realty Company vs. McClellan, was brought for the purpose of determining what obligations of the city should be included in ascertaining the ten per cent. limit of indebtedness provided for in the Constitution. This involved also the question of what deduction should be made from the total existing indebtedness when it was ascertained under the Constitution provided by reason of holdings

of the various sinking funds, or by reason of unallotted proceeds of bonds in the city treasury. It also involved the question as to whether special franchises were real estate within the meaning of the Constitution and were to be included in the valuation which is to determine the debt limit. The suit involved the consideration of many questions affecting the debt limit which were certified by the Appellate Division to the Court of Appeals and are found on pages 180, 181, 182, 183, 184, 185 and 186 in the reported case of Levy vs. McClellan, 196 N. Y.

All of them were consolidated and tried together before General Tracy, as referee.

The question as to whether special franchises should be included as real estate within the meaning of the Constitutional provision was argued at great length on both sides, Judge Ingraham in the Appellate Division having written an opinion to the effect that they could not be included and the Court of Appeals finally deciding that they could.

Another important question was as to whether, where the city had entered into contracts for municipal improvements and the contracts had been certified by the Comptroller in accordance with section 149 of the Greater New York Charter, the total amount which the city obligated itself to pay was an indebtedness within the meaning of the Constitutional provision. The referee had held that only the amount earned on existing contracts was a liability, but the Court of Appeals held that "existing indebtedness" must, in ascertaining the margin of the city's constitutional debt limit, be regarded as including the city's liability upon contracts for public improvements under section 149 of the Charter, which is intended to be met from an issue of bonds. The referee had fixed as an existing indebtedness of the city upon such contracts the sum of $2,553,000 and the Court of Appeals held that the existing indebtedness of the city under these contracts was the sum of $54,000,000.

Another question argued and decided was as to whether revenue bonds, issued under section 187 of the City Charter to meet expenditures under the appropriations for each current year and to be redeemed out of the proceeds of the tax levy, were to be included in the debt limit, and it was held that they were not, when such

bonds have not been outstanding for more than five years since their issue, and, in ascertaining such debt limit, there should not be computed revenue bonds issued under said section for purposes other than to meet expenditures under the appropriations for each current year and which are redeemable out of the tax levy for the year next succeeding the year of their issue.

The question as to what deductions should be made from the city's total indebtedness by reason of bonds held in sinking funds was argued, also as to what other deductions could be made from the gross indebtedness when once ascertained was argued and determined in this action.

The questions involved were all extremely complicated and required very careful study in order to familiarize oneself with the situation. The Bureau of Municipal Research had made a most careful investigation of the whole matter bearing on the debt of the city under the constitution and had also submitted a brief to the referee upon the subject, giving their views. And the pamphlet of the bureau is within the book I showed you.

There was a difference of opinion among many persons in regard to what obligations should properly be included in the debt limit and as to what deductions should be made. The Corporation Counsel, Mr. Pendleton, had written certain opinions, the Bureau of Municipal Research had been making investigations and come to certain conclusions, and Mr. Bird S. Coler, who was then President of the Borough of Brooklyn, had different opinions with regard to the question. It was claimed by an affidavit made by Mr. Coler that the Levy suit was brought at the suggestion of Comptroller Metz, and the question in which he seemed to be directly interested was the building of the subway in Brooklyn in particular and he charged in an affidavit made on the 23rd of June that the question involved in the Levy suit was not within the jurisdiction of the Court.

In July, 1908, another action was brought by David Meyer, and in October, 1908, the Fleischmann suit was brought.

All three suits were consolidated and the matter was heard before Benjamin F. Tracy, as Referee, and then taken up on appeal, the City paying the expense of printing the appeal papers by stipulation. That answers part of your other question.

The counsel differed in their contentions. Counsel in the Meyer suit claiming that special franchises were properly assessed and valued as real estate, which contention was opposed by counsel for Levy and for the Fleischmann Realty Company and also that the contract liability of the City in the sum of $54,000,000 could not be considered in determining the City's indebtedness, which was also opposed by counsel for Jefferson M. Levy and for the Fleischmann Company.

Counsel for Meyer also contended that the amount for which the city was liable for lands taken under condemnation proceedings, where the title had vested in the City but the amount had not been fixed, was not a debt. Counsel on the other side in the other two cases contended differently.

In a number of other questions counsel disagreed and the whole matter was thereafter presented to the Court by a series of questions which were agreed upon and which settled absolutely the basis upon which the Comptroller should make up his statement as to existing liability of the City under the Constitutional provision.

Q. Was there any suggestion in the case as to who was behind the Fleischmann case, or in whose interest the Fleischmann case was brought? A. No suggestion that I know of. The Fleischmanns were interested, being large real estate owners—were interested in having rapid transit — being large real estate owners in the Bronx and New York, were interested in having rapid transit in New York and in Brooklyn.

Q. They didn't come to you to bring the suit; you went to them? A. In a way, we are stockholders of the company, large stockholders.

Q. Of the Fleischmann Company? A. Yes.

Q. Well, you have told how it came about. Mr. Nicoll spoke to you, and you got the permission of the Fleischmann Company to represent them. When the City agreed to pay the expenses of printing, wasn't it the successful party? A. I don't know.

Q. Apparently it was, from the record you have showed us? A. Wasn't what?

Q. The successful party? A. Who, the City?

Q. Yes. A. There could be no successful party, since the action was brought to ascertain how the debt limit could be made

up. So I don't see how there could be a successful party. The City was as much interested as everybody else.

Q. The action, as I have read it to you from its prayer, was an action for injunction against the City authorities, and that injunction was denied, wasn't it? A. I think it was, but that was only illustrative —

Q. I know, but your action in fact was an action by somebody against somebody, and its purpose was to get an injunction against the City of New York? A. Until the debt limit could be ascertained.

Q. Its purpose was to get an injunction against the City authorities? A. No, sir, that was an incident to it.

Q. It was the whole thing. I read you the prayer for injunction. A. In our suit?

Q. In the Levy suit? A. I suppose incidentally that was the purpose of all these suits, to enjoin the City from doing anything until this was ascertained.

Q. Why do you say incidentally? A. The injunction part of it.

Q. Was not the injunction part of it the whole of it legally? A. If you mean the trial of the action was to be for permanent injunction, yes. I thought you were referring to the application of the injunction *pendente lite.*

Q. The application for the injunction *pendente lite* was made because the nature of the action was that of an action for injunction? A. Right.

Q. Yes. Now, the City defeated the application for injunction, didn't it? A. It did.

Q. Then why did the City pay for printing papers? A. I cannot answer that question. I suppose it did because it realized it was as much for the City's benefit to have the method of determining and ascertaining what the debt limit, as it was to anyone else, and that is clear that it was, because everybody varied on it.

Q. I don't understand why, if you were actually got into the case by Mr. Nicoll, whose interests were really in the Interborough, why the City ——? A. I don't know that.

Q. Well, you ought to know it if anybody does. A. Mr. Nicoll has other clients besides the Interborough, I imagine.

Q. Did you take the trouble to ask him? A. I did not.

Q. Well, supposing Mr. Nicoll asked you to do that for his own personal interests? Why shouldn't he have paid for the printing of the case when he failed to get the injunction? A. I don't know. I think that is a good question to ask the City. I am not responsible for the City. There can only be one inference in the City agreeing, and that was it was fair.

Q. I want only to get the facts. I am trying to see here if I can get from you anything that would help us to find out. A. You could only get a conjecture.

Q. That is all I want. A. I could only guess that it was a fair thing to do. The City was as much in trouble to figure up what the debt limit was as anybody else.

Q. Wasn't this an arrangement between the City and the railroad and all of them together? A. Not that I know of. I want to say, Mr. Moss, that I had no personal connection with that end of it. I never saw any human being on the subject.

Q. Doesn't it look so, if the City was paying the disbursements? A. That it was what?

Q. That it was gotten up together between these parties, if the City was paying the disbursements of the unsuccessful parties? A. Well, it may look so, and I don't see how there could be any unsuccessful party.

Q. The fellow that didn't get the injunction is an unsuccessful party. A. I don't know but what there was a verbal understanding that the City would not do anything until this thing was threshed out. I don't know anything about it.

Chairman Thompson.— Can't you comprehend that when they all get together, before they get into court, there can't be anybody unsuccessful?

Mr. Moss.— I had not comprehended it. It is beginning to dawn on me.

By Mr. Moss:

Q. You tell us the printing was all the disbursements there were, and according to your testimony, it would appear the City paid about all the disbursements there were, when it was the winning party. A. No. You misunderstood this. I did not say the City paid all the disbursements. I said "the City paying the expense of printing the appeal papers." That is what I said—

"by stipulation." It was only when it got to a point where it was going to the Court of Appeals, I think, the City paid the expenses.

Mr. Moss.—Now, out of this volume which you have brought here, which is entitled, "Cases and Points, Volume 12, Hays & Hershfield," I read from the papers in Levy against McClellan, affidavit of William G. Perfect—evidently a perfect affidavit—read on behalf of defendant Coler. Perhaps this is what you referred to. Title of the Action. William G. Perfect, being duly sworn, deposes and says that he is a resident of the Borough of Brooklyn, County of Kings, etc.

> "That on the 12th day of June, 1908, between 2 and 3 o'clock in the afternoon, he was present at the office of the Comptroller of The City of New York, and then and there had a conversation with Herman A. Metz, the Comptroller of The City of New York, and that at that conversation and participating in the same and present were, besides the Comptroller, Herman A. Metz, and this affiant, Frank A. Hutson and John A. Hefferman;
>
> "That the conversation pertained to an injunction obtained by one Jefferson M. Levy, as a taxpayer, in the Supreme Court of New York County to restrain the Board of Estimate and Apportionment and the members thereof from voting upon the so-called Fourth Avenue Subway.
>
> "That said Comptroller Herman A. Metz, then and there acknowledged that said injunction proceedings were begun and brought and had at his instigation to hold up the so-called Fourth Avenue Subway because he did not believe it would pay and that there was too much politics in it.
>
> "That he then and there stated to this affiant and in the presence of said Heffernan and Hutson that he had heard that Charley Murphy (meaning the leader of Tammany Hall) had issued orders to certain members of the Board of Estimate and Apportionment to vote upon the said Fourth Avenue Subway and that he did not propose that said Charley Murphy was to run his office while he was Comptroller, and he said in effect that he had thereupon obtained said injunc-

tion and caused said suit to be started." Signed, William G. Perfect. Sworn to before Frank A. Hutson the 18th day of June, 1908.

Then follows the affidavit of John A. Heffernan, containing preliminary statements similar to those in the Perfect affidavit, and following in the line with the Perfect affidavit, but adding this clause:

"That said Herman A. Metz then and there stated to this affiant substantially: 'You know you didn't have the votes this morning even if I had not got the injunction. You were licked yesterday entirely until Murphy issued his orders. That is the reason I would take no chances. I acted for the protection of The City of New York and I am going to protect the City of New York, and Tammany Hall isn't going to run my office or the Board of Estimate. I am protecting the City.'"

Then follows the affidavit of Frank A. Hutson, containing substantially the same allegations as those made by Heffernan, and containing the allegation that Metz told him that he had obtained the said injunction, and caused the said suit to be started; that Charley Murphy was not to run his office. That is the Levy suit.

Chairman Thompson.— Well, was that settled by the Court.

By Mr. Moss:

Q. There followed an affidavit of Mr. Metz, which does not touch that particular subject. Was there any inquiry upon that line, was there any testimony taken, Mr. Hershfield? A. I think not. That was only a matter of affidavits on the motions for injunction. All the affidavits pro and con are there. There was no hearing on that that I know of.

Q. What was the result of the motion for the preliminary injunction; was it granted or denied? A. I don't know that, unless I look at that record. I presume denied on the ground you cannot enjoin a municipality from doing an executive act in advance of advance of doing it. The presumption is that they are going to do what is right. But the opinion must be there.

Q. Do you know what was the purpose of having those affi-

davits put there in that case, in the Levy case? A. I have not the faintest idea. The purpose? I cannot imagine.

Q. Wasn't it put there for the purpose of showing that the Levy action was brought on behalf of an officer of the City and for that reason no injunction should lie? A. No, no. I don't think that was seriously contested. I don't think Mr. Metz made any secret of the fact he had inspired that action. I don't think he did. I may be wrong about that, but that is my impression.

Q. Did you make any secret in your case of whom you represented? A. None whatever.

Q. Did anyone ask or inquire? A. No one asked or inquired, that I know of.

Q. Did the City authorities know, so far as you are aware, that Fleischmann was merely a nominal retainer—nominal plaintiff? A. I don't know that they knew it, and I object to its being characterized as a nominal plaintiff. They had their own interest to guard.

Chairman Thompson.— Do you want that objection passed on?

By Mr. Moss:

Q. Will you explain your position? Why wasn't Fleischmann a nominal plaintiff. A. Because it was the interest of—the Fleischmann Company had interests in that suit, it owned interests to be safeguarded. Now, the fact that the suit was to be paid for by someone else doesn't alter the fact that their interest was that this Fourth Avenue Subway should not receive moneys in preference to subways in New York.

Q. It never brought the action of its own volition, did it? A. It might.

Q. I ask you did it? A. I thought you said never would have. Probably not.

Q. Did you notify the City authorities that your real client was Mr. Nicoll? A. No, sir.

Q. Did they know it? A. Not that I know of.

Q. Now, you know the conduct of the action. The City authorities, so far as you were aware, did they have any knowledge or information that Mr. Nicoll was behind your case? A. Not that I know of; nor did we owe them any duty to notify them.

Q. Did you conceal that fact? A. We made no concealment of it.

Q. Had Mr. Nicoll any interest in the Fleischmann Company? A. None whatever.

Q. Had Mr. Freedman any interest in the Fleischmann Company? A. Andrew Freedman?

Q. Yes? A. None that I know of.

Q. Wasn't it Andrew Freedman's check that paid your office? A. I have no recollection that it was.

Q. Well, Mr. Nicoll, the other day when this matter just happened to come out — I had not thought about the Fleischmann case, but Mr. Nicoll brought it out by incorrectly referring to it as an Admiral case, and he made the statement that he took to you the check of Andrew Freedman? A. If he said that, I think he is mistaken.

Chairman Thompson.— He said he paid you.

Mr. Herschfield.— I don't think he —

Chairman Thompson.— He said he paid you, and he didn't remember whether it was $10,000 or $15,000, and he talked about it as though the extra five thousand dollars didn't make much difference.

Mr. Hershfield.— I have testified to the fact that I don't think it was over ten, and I don't think it was quite ten.

Chairman Thompson.— And the money was given him by Andrew Freedman.

Mr. Hershfield.— Where he got the money I don't know.

By Mr. Moss:

Q. Don't you keep office records which show from whom you receive your moneys? A. Not necessarily. Now, for instance —

Q. Can't you leave the word "necessarily" out? Do you or don't you? A. No, not accurately, no. If we got money in this matter it would go under the head of Fleischmann Realty Company, under so and so; the source of that would not be a necessity, in our system of bookkeeping.

Q. Have you anything which shows the amount you received? A. I have not.

Q. In the Fleischmann Realty suit? A. I have not. I spent the better part of yesterday, as I said before, trying to ascertain.

Chairman Thompson.— What kind of a book do you keep, just an office record?

Mr. Hershfield.— We keep a register, for instance, as every lawyer does, and then we keep other books of account.

Chairman Thompson.—When you receive money, don't you put it down somewhere, received?

Mr. Hershfield.— As a rule, yes.

Chairman Thompson.— Or just divide it up then and there?

Mr. Hershfield.— No, we don't divide it up then and there, at the time.

By Mr. Moss:

Q. Well, of this was not entered in the book, it would not be according to your usual custom, would it, the sum of $10,000? A. It would not.

Q. Ordinarily it would be entered? A. I don't say I won't find the books yet.

Q. I think very likely you will, Mr. Hershfield. A. But these books — this must be about 1909, that is seven years ago.

Q. Yes. A. And we have moved since then. There are a lot of books thrown out, and papers thrown out — a lot of those books and papers accumulate. I have still hope of finding it.

Q. Well, Mr. Hershfield, I won't keep you longer this morning. If you run across that, will you let me know.

Chairman Thompson.— October, 1909. Only about six years ago.

Mr. Hershfield.— I make it more than that.

Chairman Thompson.— The Court of Appeals decided in October, 1909.

Mr. Hershfield.— It does not follow that we only got paid after it was all over. It started in 1908.

Chairman Thompson.— Did they pay you more than one time?

Mr. Hershfield.— Only one time.

Chairman Thompson.— Did they pay you before you began, or after you got through?

Mr. Hershfield.— I don't know. Certainly not before we begun, but when it was I don't know. I telephoned Mr. Nicoll to ask them if he could not give me a date, and he couldn't.

Chairman Thompson.— Haven't any recollection on the subject?

Mr. Hershfield.— Not the slightest.

By Mr. Moss:

Q. We may assume he doesn't know when he paid it to you, because you have asked? A. As to date.

Q. If it were his check he could find out. If it were Mr. Freedman's check he would not find out, because it is not in his records? A. That is right.

Q. Makes it look as though it was Mr. Freedman's check, doesn't it? A. Makes it look so, provided Mr. Freedman gave a check for exactly what was due to us; but if Mr. Nicoll was acting for his client, the chances are he would get a check for himself for his entire fee, and pay us out of that.

Q. Out of his fee? A. I should imagine so, on that theory. I don't suppose —

By Chairman Thompson:

Q. Who is this Fleischmann Realty Company? A. A corporation.

Q. Who is the president and the stockholders? A. Mr. Fleischmann.

Q. Is he the whole thing, own all the stock? A. It is practically a partnership in the buying and selling of real estate.

Q. I understand; but who are the stockholders in it? A. There were a dozen, two dozen.

Q. Who are they? A. I will file a list, if you want.

Q. You remember who the officers were? A. Mr. Fleischmann was president; there was a Mr. James Stern in it; there was another officer; there was Mr. Cyrus Sulzberger.

Q. Anybody there related to your firm, or in your firm, interested in this company? A. I don't think so; that that I recall at present.

Q. Well, just give me a list of the stockholders and directors later.

JOHN R. RYON, recalled, testified as follows:

By Mr. Moss:

Mr. Moss.— Mr. Chairman, you were present when Mr. Ryon testified — you were in the room when he testified before that he was connected with the Chauncey Real Estate Company, and was plaintiff in one of those suits?

Chairman Thompson.— No, I don't remember about that.

Mr. Moss.— He testified he was plaintiff in one of the suits at the time that the Admiral suit was conducted.

Q. Mr. Ryon, you testified that you were secretary of the Chauncey Real Estate Company of Brooklyn? A. I did.

Q. Limited. Is that the company of which George W. Chauncey is President? A. It is.

Q. You are one of the directors? A. I am.

Q. Are you a director of the New York Consolidated Railway Company? A. I am not.

Q. Were you ever? A. No.

Q. The Sea Beach Railway Company? A. I have never had any official position with any of the Brooklyn railroad companies, and with the exception of a few bonds which I think I owned for a very short time, I have never had any securities of any of those companies.

Q. You are not connected with, or had any connection with the Canarsie? A. I have not.

Q. Is Mr. Chauncey? Is he a director of the Consolidated Railway Company? A. May I make a statement?

Q. Will you answer that question first? A. I have the impression he is a director in one of the B. R. T. companies; which one I don't know.

Q. You have an impression. Don't you know that is a fact, that he is a director of one of the B. R. T. companies? A. I am quite sure of the fact, and I have not the remotest idea which one it is. May I make just a little statement here.

Q. Yes, sir, certainly. A. My connection with the Chauncey Real Estate Company dates from the 1st of July, 1913, and prior to that time I had no relations whatever with them except in the ordinary business ways, as you do with any ordinary concern. These matters took place prior to that. My acquaintance with Mr. Chauncey was of the very slightest. He was president of the bank I kept my account in, and my acquaintance with the Chauncey Real Estate Company was imminent, because I had done more or less real estate business with them.

Q. How closely were you associated with Mr. Chauncey before you became a member of the Chauncey Real Estate Company? A. No more closely associated than I would be with any man who was president of the bank I kept my account in.

Q. Was he president of the bank in which you kept your account? A. Yes, Mechanics Bank.

Q. He was chairman of the board of directors? A. President at that time, and now chairman of the board of directors.

Q. Do you know whether any of the B. R. T. moneys are deposited in that bank? A. I have no idea. I should think quite likely.

Q. You say "quite likely." I have been informed they are. A. I have no knowledge absolutely.

Q. How much business did you do with Mr. Chauncey in the year before you became secretary of his company? A. I don't think I did any business at all.

Q. How many times did you see him in the year before that? A. Possibly two or three.

Q. You said you had a good deal to do with him? A. No, I did not. Excuse me. Mr. Chauncey is not an active head of the Chauncey Real Estate Company, although he is its president. His interest was with the Mechanics' Bank and his attention with

the affairs of the real estate company was very slight for a number of yeares, so that any business I did with the Chauncey Real Estate Company was not with Mr. Chauncey.

Q. Where was your office before you became secretary of his company? A. 186 Montague street.

Q. Where was his office? A. The Mechanics' Bank.

Q. 187 Montague street? A. In the corner of — 215 Montague street.

Q. 215, yes. And it is now at 187? A. Now? The Mechanics' Bank is still in —

Q. The office of the Chauncey Real Estate Company is 187 Montague street, isn't it? A. It has been since 1907.

Q. Did Mr. Chauncey know you were bringing this action? A. Not except what knowledge he got from the newspapers. I never talked with him, before or since, about it.

Q. Didn't he know that you were plaintiff in that action, when you brought it? A. He could read it in the newspapers. He didn't get it from me.

Q. Didn't you talk to him about it? A. Never, and at no time since.

Q. The Chauncey Company has been pretty active in Brooklyn matters, hasn't it? A. Somewhat.

Q. Subway matters and elevated matters? A. No, I don't think the Chauncey Real Estate Company has any — I know it has no interest at all now that is affected by the subway situation. I don't think so at that time, before my connection with it, but the interests they have, consist of a few pieces of improved property in the old parts of the town, and the interests of the clients they represent, but included practically no such property as would be affected by the subway proposition in any great degree.

Q. You brought your action in the interest of the B. R. T.? A. I cannot say that. I brought the action because I was personally interested in the whole proposition. In other words, if I had not been, I should never have had any interest in the action.

Q. You brought the action because Mr. Baylis spoke to you about it? A. Partially. Mr. Baylis, as I stated before, has been my attorney for a great number of years and I had confidence in him.

Q. You would not have brought it if he had not asked you? A. Certainly not.

Q. Did you know he was acquainted with Mr. Williams? A. I had heard him speak of Mr. Williams, as having business relations with him. I think Mr. Williams has a summer place at Huntington, and Mr. Baylis also has.

Q. Did Mr. Baylis tell you of a conversation with Mr. Williams before he brought the action for you? A. I have a hazy recollection —

Q. What did he say to you? A. My recollection was refreshed by Mr. Baylis's testimony, that he had some talk with Mr. Williams in connection with the transit proposition, and the question had been brought up as to the possible unconstitutionality of the law which permitted the City to enter into this contract, and my recollection is, from the remark Mr. Baylis made the other day, Mr. Williams said the suit would be of an interesting character, and that, so far as I know, is the only time Mr. Williams's name was mentioned. And I remember if from the character of the remark, that it would make an interesting lawsuit. In other words, at the time that action was started I asked no questions. I had what I considered considerable interest of my own, and I had in mind that the railroad companies were not the only people interested in the situation, but were the biggest interests of people, like myself, owning property, and suffering from transit —

Mr. Baylis wanted to make an advantageous connection, under the case? A. I presume Mr. Baylis would hardly — a man like Mr. Baylis would hardly touch a case like that without compensation in some form.

Q. Not from you? A. I didn't think so.

Q. Were you his client? A. I was his client.

Q. You were not paying him anything, and would not expect to? A. I would not say that. The whole proposition was left indefinite.

Q. You did not expect to? A. If I had been charged a small fee, I would have cheerfully paid it.

Q. Suppose you were charged as the unsuccessful litigant, would you pay that? A. No.

Q. I think that is enough. A. I want to make it plain that I

would not have taken any action if I had not had a personal interest in the matter. Will that be all? You don't care to have me —

Q. No, you need not wait.

Chairman Thompson.—You may be excused.

DAVID W. ROSS, recalled, testified as follows:

By Mr. Moss:

Q. Now, Mr. Ross — David Ross, isn't it? A. Yes.

Q. You said you were one of the Vice-Presidents of the Interborough? A. Yes, sir.

Q. Having charge of coal contracts, among other things. Haven't you charge of some other things besides coal? A. I have charge of real estate, purchases of all materials.

Q. What do you do in connection with real estate? Purchases of all materials, and coal. What do you do with real estate? A. Well, have to buy some, but principally renting, principally we rent and try to get a revenue.

Q. Buy oil and rails? A. Yes, sir.

Q. All kinds of things? A. Yes, sir.

Q. Have you the contract under which coal is supplied by the Berwind-White Company? A. Yes.

Q. Let's have it, please. A. (Witness hands papers to counsel.) That is that blank copy I told you the other day I would give you. That is the blank copy, I told you the other day —

Q. This is the blank copy, but here is the original. Where does that show the price? A. (Witness takes papers.) There are three contracts here. At the left (witness indicates), in all of them.

> Q. "11. Payments. For and in consideration of the true and faithful performance by the Contractor of each and every covenant and agreement on its part herein contained, the Company hereby undertakes and agrees to pay the Contractor on or before the 15th day of each month, the value of the coal delivered during the next preceding calendar month, at the rate of three and 23/100ths ($3.23) dollars per long ton

of 2,240 pounds of standard coal between 14201 and 14250 B. T. U., both inclusive; according to the following table of values, but subject to any and all deductions as herein provided, and subject to a proportionate increase or decrease if and while there shall be any increase or decrease in railroad freight rates from the mines of the Contractor to New York Harbor, re-shipping piers. It is also understood by and between the parties hereto, that if, during the term of this contract, the Employers' Liability Law shall become a law in Pennsylvania, and if the Contractor shall furnish proof satisfactory to the Company that the cost of furnishing the coal under this contract has been increased by reason of such Act, and of the amount of such increase in cost, the price payable hereunder shall be increased so as to cover such increased cost in addition to the amount herein provided to be paid."

Has there been any change on account of that clause? A. Yes, just recently.

Q. What? A. Increased five cents a ton, in the case of Berwind-White and the Consolidation, both. The same provision is in the Consolidation.

Q. This contract is the one running from 1915 to 1918? A. Yes, sir.

(Assemblyman Feinberg takes the chair.)

By Mr. Moss:

Q. Where does it show the premiums? A. (Witness indicates.) Pages 6 and 7.

Q. Those premiums appear in the printed blank which you have given us. We won't state that on the record. A. Just the same. They are just the same as the copy you have in your hand.

Q. How much have you paid on these premiums under this contract? A. I don't know as to that, but we are having a statement made up, which we will have this afternoon.

Q. That statement will come to me this afternoon? A. Yes.

Q. Very well. The contract for 1912 to 1915, is similar in form, at $3.20? A. Three cents a ton less than the present one. I think that one was the same rate.

Q. 1909 to 1912 is $3.15. Now, as to the Consolidation Coal

Company, I have here your contract which you have just handed me. A. The prices are just the same.

Q. The prices are just the same as the Berwind-White? A. Yes, sir.

Q. In each period? A. In each period.

Q. Some attention was paid to the matter of strikes when you were here before? A. Yes, sir.

Q. When was there a strike in the bituminous section? A. I am not familiar as to when there was one.

Q. I am assuming that you ought to be familiar, if you think for a minute, because you have one of the biggest coal contracts in New York, several of them — when was the last bituminous coal strike which affected prices? A. I will have to look that up.

Q. Can you remember one? A. Not during my time.

Q. Hasn't been a strike during that time? A. Not that I know of.

Q. Well, then, as a practical matter, how much does the strike situation affect your contract, per ton? A. It is possible there may be one; often talked of.

Q. But — A. Quite possible at any time.

Q. Practically, how much a ton do you think the possibility of a strike affects this contract? A. Well, having no strike clause in the contract would make it worth very considerably more to us than if there were one with —

Q. I understand, but in dealing with other companies how much difference would you suppose would be made by a strike contract? A. I should say 25 to 35 cents a ton, I should say.

Q. When there has not been a strike in ten years? A. Yes, sir. The assurance we will always be taken care of with a supply of coal ought to be worth that much to us.

Q. Where are the bituminous mines from which you get your coal? A. Pennsylvania.

Q. What part of Pennsylvania? A. I don't know the exact part of it.

Q. Down near the Virginia boundary? A. I think so, yes, sir.

Q. Practically West Virginia coal, isn't it? A. I think so, yes.

Q. The strikes that we hear so much about are in the anthracite region, aren't they? A. They have strikes in the bituminous, too.

Q. You have not heard of any? A. Not since I have been here — seven years.

Q. Can't think of a strike in the bituminous region within ten years, can you? A. I wouldn't know about the period before I was here. I have known of many strikes out through the west.

Q. Where you have heard of any, they are in the anthracite region; not in the bituminous region? A. A great many in the bituminous regions in the West — Illinois and Ohio, and throughout there.

Q. You are not getting coal from Ohio and Illinois, are you? A. I don't know just when they had the last one in the East. I can't see any reason why it is not as probable in the East as in the West. I know they frequently have them in the West.

Q. What are these papers? A. The vouchers for coal for five years.

Q. They should show those prices, won't they? A. Yes, sir. They show also the penalties and the premiums.

Q. But the statement you are going to give me will show that, without having to examine the vouchers? A. Yes.

Q. We will see what your statement shows first. I think that will do for this morning, Mr. Ross.

By Mr. Feinberg:

Q. Does your jurisdiction extend to the purchase of all supplies? A. Yes, sir.

Q. And the payment of all premium bills? A. Yes, sir. I don't pay the bill.

Q. But for the purchase of bills, to the expenses incidental to the condemnation proceedings? A. No.

Q. Who has charge of that? A. Mr. Quackenbush.

Q. Mr. Quackenbush? A. You mean —

Q. All the expenditures incident to the condemnation proceedings? A. Printing, I do.

Q. You pay for the printing, the photographs, things of that kind, you pay for all that? A. Yes; well, I don't make the payments myself.

Q. You make the arrangements? A. Approve the vouchers.

Q. You have the arrangement and sign for it? A. Yes.

Q. That is all for the present.

CLARENCE C. HARRIS, recalled, testified as follows:

By Mr. Moss:

Q. Your first name? A. Clarence.

Q. Yes. What can you say about strikes, as affecting the price of bituminous coal, in the lines about which we examined you the other day? A. They have very little effect on the price.

Q. When have there been any strikes in the bituminous region, Pennsylvania and West Virginia? A. Not within ten or twelve years, I should say.

Q. In dealing with a contract such as those under consideration, the furnishing of this large amount of coal for the Interborough, what, in your opinion, would be the difference practically per ton on account of the absence of the strike clause? A. My opinion is that would be worth possibly two or three cents a ton.

Mr. Moss.— Yes. That is all. Is the gentleman here from the Lehigh Railroad?

(No response.)

Mr. Moss.— Is Mr. Gaynor here?

Mr. Quackenbush.— We will send for him if you want him.

Mr. Moss.— Is the auditor of the B. R. T. here, Mr. Abel?

(No response.)

Mr. Moss.— The subpœna was served, wasn't it, Mr. Morse?

Mr. Morse.— Mr. Howard Abel.

Mr. Moss.— Make a note he was called and did not appear. Is Mr. Kohler here?

Mr. Kohler.— Yes, sir.

L. FRANK KOHLER, called as a witness, testified as follows:

By Mr. Moss:

Q. Mr. Kohler, you have been sworn? A. I believe I have.

Q. Just for the sake of the record at this time, what is your position in the Public Service Commission? A. Railway engineer.

Q. Have you charge of the claims and the vouchers supporting them, made by the Interborough Railroad and the B. R. T. Railroad for allowances on account of their disbursements for force, I think they call it? A. What do you mean by charge? I am in charge of the squad which examines all of the vouchers and papers.

Q. Have you the vouchers here? A. I have some of the force accounts. I could not bring them all, because it would take a couple of van loads, and they are distributed throughout our organization.

Q. What have you brought?

Mr. Moss.— Mr. Chairman, I subpœnaed Mr. Whitney to produce these documents, and Mr. Whitney communicated with me, and said it would be more direct to subpœna Mr. Kohler, in whose immediate possession these things were. That is why I have asked Mr. Kohler to come.

Mr. Kohler.— Here are some of them, as samples.

Q. Let me see them. A. (Witness hands book, apparently being loose leaf file, to counsel.)

Q. Haven't you a list of the force for which the charges are made? A. I have brought over one of them. There are — I was almost going to say thousands of them, hundreds of thousands.

Q. There are hundreds of thousands of papers like this one you have just handed me? A. Yes, sir.

Q. Then this will do for the moment. A. I won't say just like that, because that contains force of a particular department; I mean similar to that, in other departments.

Q. The witness has handed me paper entitled, "Monthly Force Accounts, Sheet No. 2, Interborough Rapid Transit Company." Tell us what this is, Mr. Witness? A. That represents the force — the charges for the general attorney's office, account of obtaining consents accrued during the month of February, 1915.

Q. What has the Public Service Commission to do with that? A. Why, it so happens that under the certificate for additional tracks on the elevated lines, the company is required at the completion of the work to submit to the commission a statement showing the total cost of such work, and it is required that the commis-

sion shall check such costs. It being physically impossible to check that after the work is completed, the commission has required the company to submit evidences of charges on account of that work, and as the work progresses.

Q. What relation has the city or the Public Service Commission to those charges of the Interborough Railroad, those expenditures, made by the Interborough Railroad? A. Why, these expenditures are part of the expenditures on account of third-tracking the elevated lines.

Q. Yes. And what interest has the city in having those checked up? A. Well, the certificate for additional tracks requires that the commission check up such costs.

Q. What interest has the city in those expenses? A. These expenses form part of the cost, or are intended to form part of the cost.

Q. What interest has the city in that cost. It comes out of the profits of the railroad, doesn't it? A. No, sir, it doesn't come out of the profits of the railroad.

Q. Where does it come out? A. If you mean that — this cost forms the basis upon which the interest deduction from operating expense is to be determined.

Mr. Moss.— Will you mark that, please?

Mr. Kohler.— Do you want to keep that? It is in active use.

Mr. Moss.— I will mark that, and you can supply me with a copy of it. I want the original marked.

(Monthly Force Account, Sheet No. 2, Interborough Rapid Transit Company, marked Exhibit No. 1, March 1, 1916, V. E. Valva.)

By Mr. Moss:

Q. The reason your commission has to check these up is because the city is financially interested in them? A. Yes, sir, financially interested in the results of the operation of these railroads.

Q. Exactly. Perhaps I can — this is not very long; I will read this right into the record.

Mr. Quackenbush.— Mr. Moss — may I make a suggestion, Mr.

Chairman? These are public documents, of course, but we have some fifteen hundred separate litigations now pending and being tried from hour to hour in which that force is engaged. It occurs to me that may be doing something in the aid of the people, or trying to increase these costs to the City, and I submit that for your consideration. I have not the slightest objection to anything about the Law Department being made public. That is already a public document, but it pertains to the salaries of my trial lawyers, my process servers, investigators, adjusters, and everything pertaining to litigation.

Mr. Moss.— I cannot imagine any practical way in which this would hurt the interests of the City.

Mr. Quackenbush.— Well, we are engaged in a litigation with many people who are seeking to make the land damages a very large sum. It may run into millions if they succeed, before all these Commissioners, and we are endeavoring on our part to have the awards made at reasonable figures. We have settled with sixty per cent. of all the people, who have accepted our figures, and we have got this litigation going on. I don't like to have both sides of the litigation in the hands of the people with whom I am litigating, any more than any lawyer. The Chairman (referring to Assemblyman Feinberg) is one of the Commissioners in one of these proceedings, and it strikes me as being a thing I would like to have you consider. I have no request to make.

Mr. Moss.— I cannot for the life of me see how a knowledge of the expense of this department —

Mr. Quackenbush.—Well, sir, anything about the Law Department may be spread upon the front page of every newspaper in this town, from the time I became connected with it, twelve years ago, and I have not any objection beyond the one I have mentioned.

Acting Chairman Feinberg.— Isn't this a public record.

Mr. Quackenbush.— I said it. I send it monthly to the Public Service Commission.

Acting Chairman Feinberg.— Can't these attorneys — if they are interested — can't they get it from the Public Service Commission?

Mr. Quackenbush.— I don't know. While it is a record there, I don't suppose it is a public record for everybody, without any reason for it, and I have a sort of a notion that these attorneys who are opposed to us in this litigation, might have some desire to have that information. If they wanted to ask me for it, I might give it to them, but I don't like the idea that this Committee is aiding the persons with whom I am contesting the questions.

Mr. Moss.— I don't see how we are doing that. Every crook in New York knows how much the District Attorney gets and the Assistant District Attorneys.

Mr. Quackenbush.— I have already filed what my lawyers get.

Mr. Moss.— That is what this is. The only difference is these payments are made directly by the Interborough, and as such would be company charges, but by the peculiar operations of the Rapid Transit Act or contracts, and one thing or another, the City becomes interested in the private expenses of the Interborough.

By Mr. Moss:

Q. May I ask this preliminary question, Mr. Kohler. You have not approved this particular paper which you send me? A. No, sir.

Q. How long has your Commission been holding up these papers? A. Ever since the work has started. We are not required to approve any of these until, I believe it is six months after the roads have been in operation, when the company is required to submit its statement of costs.

Q. Well, weren't some approved at the beginning? A. No, sir, not with regard to this matter. You have in mind the third-tracking contract. It is only with regard to Contract No. 3. You see, this work consists of three divisions, the railroad which is being built under Contract 3; the third or additional tracks, which is being built under the certificate—which are being built under the certificate issued by the Commission, and the elevated extensions, which are built under another certificate.

(Chairman Thompson resumes the chair.)

Q. Yes. A. Under Contract 3 the Commission determines the cost — rather, the Chief Engineer is required to render a determination of cost from time to time. Under the two certificates, they are determined after the roads have gone into operation, upon statements submitted by the Company, upon the completion of the railroad.

Q. Are they all being held up now — everything submitted to you being held up now? A. Well, we are holding up nothing I will say to that.

Q. I was under the impression, from my conversation with Mr. Whitney yesterday, that the first quarterly — A. First quarterly determination?

Q. First quarterly determination had been made? A. Yes, sir.

Q. But there had been none made since that time? A. No, sir. That is, the quarterly determination of the cost of the railroad under Contract No. 3.

Q. That is different from this? A. That is different from this.

Q. When was that quarterly determination approved? A. It has not been approved, the first quarterly determination.

Q. Never been approved? A. The prior determination.

Q. Is the prior determination the only one? A. That is the only one that has been approved, because it had — no objections have ever been taken to that inside the time required by the contract.

Q. And has nothing been approved since then? A. I believe the Interborough Company has objected to the first quarterly determination.

Q. Didn't allow enough? A. Didn't allow all of the expenses claimed.

By Chairman Thompson:

Q. When was that made? A. I don't recall the date, absolutely. I think it is in here before — I think we testified to that previously.

Q. Is that the one made in June, 1913? A. I think later than June, 1913.

Q. Not the summer of 1913? A. I think in 1914, possibly, or later in 1913. If you have it here —

Mr. Shuster.— That is it.

Mr. Kohler.— If that is the first quarterly determination.

Mr. Shuster.— The prior determination by the Chief Engineer.

Mr. Moss.— Give the date any way you can.

Mr. Shuster.— That was printed under date of October 14, 1913. The original duplicates were signed by the Chief Engineer on October 20, 1913, and were served upon the Public Service Commissioners and the lessee as required after the contract on October 21, 1913, and as a matter of courtesy, not of contract of compulsion, similar copy was served on the Comptroller, the President of the Board, Mr. McAneny, and I believe Mr. McInnes of the Comptroller's office, with a letter to the Comptroller notifying him that objections should be made within thirty days. On November 21, 1913, objections were filed by counsel to the Public Service Commission, in behalf of the Public Service Commission, and that matter was held in abeyance by stipulations quite numerous, until April 7, 1914, when, on the recommendation of the Engineer and the counsel to the Commission, and after conferences with the Commission, the Public Service Commission rescinded its resolution authorizing the objections to be filed against the prior determination, and such determination was made practically by an agreement between the Public Service Commission and the railroads as to the items of prior determination. That is all — that is statements culled from the testimony before the sub-committee.

Mr. Moss.— Testimony of Mr. Kohler?

Mr. Shuster.— Mr. Kohler and Mr. Whitney and Mr. Turner.

Mr. Moss.—Yes. I think, Mr. Chairman, if you have no objection, I will read this.

Mr. Quackenbush.— Just a moment.

Chairman Thompson.— What is the matter now?

Mr. Quackenbush.—I want to call your attention to the situation here. I say in the beginning — as I said in your absence —

anything pertaining to the Law Department during the last twelve years I am willing to have on the front page of every newspaper in the country, but —

Chairman Thompson.— I will ask the newspapers not to put anything on the front page.

Mr. Quackenbush.— All right. Here is a thing which is a practical question now, nothing that has to do with investigation or anything of that sort. But the witness has produced from the Public Service Commission's files, force account reports which I send to them every month, of that portion of the Law Department which is engaged before the Commissioners of appraisal, in ascertaining the land damages for the third tracking of the elevated railroads. The amount of the salaries of everybody connected with the Law Department is on file in detail with your accountants, so that everything and all the pay rolls and everything are before the Committee. Here is the situation. When we started the third-tracking of the elevated railroads, we fixed rates which we deemed to be fair, and offered them to the property owners, and sixty per cent. of them have accepted them, and they have been paid without litigation. About thirty per cent. of them have gone into litigation, largely in the hands of a particular firm of lawyers who for several years were soliciting retainers or receiving retainers. The rates which the people have accepted, the sixty per cent., I think are some evidence of the fairness of our figures. But these other people who are in litigation, and their lawyers, don't think so. Assemblyman Feinberg is one of the Commissioners, as it happens, just by accident. Now, one of the questions that we are considering there is whether or not we are going to go ahead with these condemnation proceedings, and pay the fees of the Commissioners and the stenographers, or whether, because there is an expense that is being run up all the time, we are going to increase these rates and pay these lawyers. And their knowledge of what this is costing us is one of the arguments which is going to stiffen up their clients not to take our rates, which sixty per cent. have taken. And while I say it is a public document, I am not sure, if they go to the Public Service Commission they should have that. I don't think you should aid those peo-

ple. There is no sensitiveness about what the men receive. I don't care to have those opponents —

Chairman Thompson.—We will take it up during recess.

Assemblyman Feinberg.— I can see the fairness — Mr. Quackenbush does not —

Chairman Thompson.— We will take it up during recess.

Mr. Moss.— I am required — I say required with emphasis, to appear before the United States Committee that is examining into the charges against Mr. Marshall, at two o'clock. I don't think I will be more than a half hour.

Chairman Thompson.— We will suspend now until two-thirty o'clock.

Mr. Moss.— Will you have Mr. Gaynor here then?

Chairman Thompson.— Wait a minute. I understand that there is something about this — you think the knowledge of it coming to the opponents of the railroad in condemnation cases is likely to affect the status of the subject of the proceeding.

Mr. Quackenbush.— Yes. There are 1547 cases pending.

Chairman Thompson.— We better not even talk about it here in public until we see what it is, and we will hold an executive session to thrash it out.

Mr. Moss.— Let me have what you have there, Mr. Kohler, so that we will have —

Chairman Thompson.— We will suspend now until half past two.

(Whereupon at 1:05 o'clock P. M. the Committee adjourned to meet at 2:30 o'clock P. M., the same day, same place.)

MARCH 1, 1916 — 3 P. M.

AFTERNOON SESSION

Chairman Thompson.— You may take this letter in the record:

New York, February 29th, 1916.

"Hon. George F. Thompson,

"Biltmore Hotel."

Before reading this letter I might say that I found it at my hotel when I arrived this morning — and incidentally I didn't read my mail last night — I find that on February 28th at 9.46 P. M., Mr. George W. Young called at the Biltmore and inquired for me and left a note for me, stating that he would call the next day. I find that on February 29th, at 1.12 P. M., he called and left his card with his name on it. I now have this letter:

New York, February 29th, 1916.

"Hon. George F. Thompson,

"Biltmore Hotel.

"My dear Sir: —

"As requested by your telegram, and in accordance with my promise to you, I have returned from the South, arriving in New York on Monday.

"I immediately called upon you at the Hotel Biltmore and left word I would call again to-day, which I did.

"I understand that you are in Albany and have arranged for an extension of time during which testimony can be taken and that such time has been extended until July 1st.

"In glancing over the newspaper reports of the proceedings of your committee during my absence from the city and reading some of the statements credited to you it seems to me that the public has been given the impression that I was trying to avoid appearing before your committee. This is not fair to me and I really feel should be corrected.

"The statement given out as coming from you that I had telephoned Mr. Morgan and advised him not to sail for Europe

is absolutely without any foundation. I never telephoned Mr. Morgan or any member of his firm on this subject or upon any other subject directly or indirectly connected with Interborough affairs or with the proceedings of your Committee.

"I cannot and do not believe that you would authorize any such statement and I would greatly appreciate your public denial of same.

"It will be necessary for me to leave town to-morrow, but I will communicate with you immediately upon my return and hold myself in readiness to come before your Committee at any time.

"With best wishes,

Sincerely yours.

"GEO. W. YOUNG."

Chairman Thompson.— Now I will state that I understand Mr. Young arrived on Monday afternoon. I don't know whether he reads the New York newspaper or not, but if he would he would have found that the Committee wanted him the day that he went away. Perhaps the papers are not read generally around here. Now in relation to the statement that he telephoned Mr. Morgan and advised him not to sell, this is the first time I have ever heard of it, or that anybody advised him not to sell. I am frank to say that I never heard that Mr. Young ever had telephoned to him about that, or as to whether he telephoned Mr. Morgan's firm on that subject. I never thought he did, and I never heard that he telephoned Mr. Morgan, or the firm of Morgan & Company, or the Interborough Rapid Transit Company about anything. Therefore, in accordance with the request in his letter I cheerfully state that I didn't authorize any such statement, in fact I never saw any such statement in print. I would like to state that he would like to have him here right away and complete his testimony before the Committee.

Mr. Moss.— Mr. Chairman, he had been informed that the Committee wanted him, and yesterday Mr. Colby called me on the phone and told me that Mr. Young was in town for the purpose of testifying and asked me what time we wanted him and I fixed the

hour of 11.30 A. M. to-day. Mr. Colby said he would have him here at 11.30 A. M. I had Mr. Colby on the wire a few minutes ago and he said he was very much surprised that Young was not here, as he thought he would read his testimony in the newspapers and he undertook to secure his attendance here, as he did yesterday.

Chairman Thompson.— Well, I suppose we would like to see him the very first thing. Of course Mr. Young was not to blame. He came Monday, just as he agreed, and of course I was up in Albany. I think we changed lawyers since he went away. I think Mr. Young is a pretty good sort from what I have seen of him, but I don't want any question about the fact that we would like him here. We are unanimous about that.

EDWARD GAYNOR, being recalled, testified as follows:

By Mr. Moss:

Mr. Stenographer, you might enter on the record that Mr. Edward Gaynor, being recalled, and asked to produce papers in pursuance of letter, testified as follows:

Q. The first paper produced is entitled, " Voucher No. 116,894, T. P. Shonts, 165 Broadway, $125,000, distribution other suspense, proposed subway route." The bill is of the Interborough Rapid Transit Company to T. P. Shonts for services rendered in accordance with the resolution of the board of directors, dated June 4th, 1913, certified copy of which is hereto attached. The date of the bill is June 5th, 1913, amount $125,000. That is endorsed and found correct by the auditor, approved for payment by assistant to the president, Mr. Pepperman, and Mr. Shonts's receipt for $125,000 is attached thereto.

Q. What next have you? A. The second question handed to me covers the resolution which I think is attached to that.

Q. The resolution which was called for, No. 2, in the letter, is attached to the bill? A. Yes.

Q. Has that resolution been put in evidence?

Chairman Thompson.— Yes, I think it has.

Q. What else have you produced, Mr. Gaynor? A. The third

was to show the original entry in the books of the company, concerning the voucher which you have just described.

Q. What book is that you have there? A. (Witness indicating.) This is the original record of other suspense.

Q. There is only one volume? A. Yes.

Chairman Thompson.— That book has been before the Committee but the items have not been in evidence, I think. That is my recollection.

By Mr. Moss:

Q. Is there any page number? A. This is a book handled on the index plan. The voucher which you are referring to is entered under the account heading of "Proposed Subway Routes," and is found upon page, subdivision PP-5.

Q. Will you kindly read the item to me? A. The entry reads as follows: "June 5th, 1913, Voucher 116,894, T. P. Shonts, President, Extraordinary Service in connection with Subway Contract, $125,000."

Q. In whose handwriting is the entry made? A. In the handwriting of one of the clerks of the office, just which one I cannot tell you positively.

Q. And from what data did he get the entry? A. This entry is taken from the voucher which you have just described.

Q. And has that entry been carried in any other book? A. It has not.

Q. That is the last entry? A. It is.

Q. Is that a book of original entry? A. Yes, it is.

Q. And the voucher which was drawn up, what was that made from? A. That voucher was prepared from the receipt by me of a copy of the resolution attached to the voucher.

Q. Did you prepare the bill? A. I prepared the voucher.

Q. What is the next point? A. The fourth point is —

Mr. Quackenbush.— Mr. Moss, if you will permit me, I might suggest that it might have been a mistake on Mr. Gaynor's part in that one statement he made about this not having gone anywhere else. I take it that it is understood that all of stub accounts find their way into the general books of the company and this is a book

of original entry and has not been carried into any other books of original entry.

Mr. Gaynor.— It is in the ledger there, suspense account. This is the original and only original account. The fourth item calls for the document furnished by Gaynor to Rogers in which this was included. I present a copy of the statement which was forwarded to me by Mr. Rogers:

"Interborough Rapid Transit Company:

"Memorandum for Mr. Rogers.

"The amounts expended in connection with 'Proposed Subway Routes' to March 31st, 1913, shown on the attached summary, dated July 5th, 1913, are as follows:

"Engineering and superintendence.....$129,659.09

"These charges cover the payment of salaries to Mr. S. L. F. Deyo and his staff for the time devoted by them to Subway Propositions, together with the rental and incidental expenses of his office, from May 1st, 1909, to March 1st, 1913, and the salary of Mr. William Barclay Parsons as Consulting Engineer, from January 1st, 1910, to March 31st, 1913.

"Administration $107,327.15

"These charges are almost entirely the expenses of the Publicity Campaign in 1910 and 1911, with the exception of $10,000 paid to the Auditor for extraordinary services, etc.

"Legal expenses $105,957.46

"If we exclude the payments under this heading made to Messrs. Grout, Towns, Nicoll, Anabel, Lindsay & Fuller and Hayes, Herschfield & Wolff, the remaining items aggregating about $10,000 are principally expenditures in connection with the Publicity Campaign.

"For the period from March 1st, 1909, to March 1st, 1913, the salaries and incidental expenses of General Officers, viz.:

"Chairman of the Board,

"President,

"Vice-President and General Manager,

"Vice-President,

"Secretary,

"Treasurer,

"Auditor,

together with the salaries and incidental expenses of their staffs, amounted to $1,532,000. No portion of this amount has been charged to ' Proposed Subway Routes.'

" You will notice that no mention is made in this memorandum of the payments to the Bankers shown on the attached.

"AUDITOR'S OFFICE.

" ETB/CAG *New York, July 25th,* 1913."

(Above paper marked Exhibit No. 2 of 3/1/16, T. E. O'Brien.)

Q. Does that cover the sum of about one million five hundred thousand and some odd dollars? A. It covers in detail the items found in the books of other suspense to the amount of $700,086.56, under the heading, " Proposed Subway Routes."

By Mr. Shuster:

Q. Mr. Gaynor, is this any part of the evidence submitted by your Company to the Chief Engineer of the Commission and upon which the prior determination was had? A. It is the statement which I prepared for the general counsel for his information prior to the so-called prior determination.

Q. Whom do you mean by general counsel? A. Mr. Rogers.

Q. And what other memorandum that Mr. Rogers submitted to the Chief Engineer is based on this data? A. It is based on that data and one additional statement, of which I give you a copy.

(Witness hands counsel copy of a statement.)

Q. Does this statement which you have just produced together with the itemized statement which you produced immediately prior, involve all the items, or include all of the items aggregating the $1,532,000 submitted to the Chief Engineer by Mr. Rogers, counsel for the Interborough Rapid Transit Comapny? A. No.

Q. What other data? A. The item of $1,532.000 is a subdivision of the last exhibit.

Q. Subdivision of this last exhibit? A. Yes.

Q. Have you a copy of the statement submitted to your company by Mr. Rogers? A. I have not. I don't know that any such statement was submitted.

Q. For your information, the Commission has a memorandum what is purported to have been submitted by Mr. Rogers and there are no items covering the $1,532,000 of the general statement. That account had been expended and held in suspense account for administration and other expenses during the period covered by the prior determination. A. I have no copy of any statement that was prepared by Mr. Rogers in connection with the contract to which you refer.

Q. Have you ever seen such a statement? A. No.

Q. Were you consulted by Mr. Rogers in connetcion with such a statement? A. Mr. Rogers asked me to prepare a statement, which you now have, and those are the only statements which I prepared for him in connection with expenditures incident to the proposed subway route.

Q. You are aware that the prior determination allowed $125,000 for administration expense to the Interborough Rapid Transit Company? A. I am.

Q. Do you know what items constitute that aggregate? A. I do not.

Q. Do you know how that was arrived at by the Engineer? A. I do not.

Q. You were not in any of the conferences with the engineer or counsel of the Public Service Commission at any time in connection with the prior determination? A. No.

By Mr. Moss:

Q. Have you nothing else? A. That was all that was called for.

Q. Have you not the items of that $1,500,000? A. If there are any others I think we will have to get them from Mr. Rogers.

Q. Was there not a good deal more called for? A. That is all that I understand you wanted. No. 1 was the resolution, No. 2 was the voucher, No. 3 was the original entry and No. 4 was the document as finally put through.

Q. Why, Mr. Gaynor, there is a much larger request than that. Have you no information on that? A. It was just a memorandum handed to Mr. Quackenbush. He only submitted it, I think, yesterday or the day before.

Mr. Quackenbush.— I supposed what Mr. Moss wanted this

afternoon was just this. The other matters that you refer to that you require, Mr. Gaynor can submit for himself. There are other matters which Mr. Morse spoke to me about last week and asked me about having accounts made up in accordance with the Interstate Commerce Commission system of accounts, and I submitted that to Mr. Gaynor and was advised by him that while we can do it in a general way, it will be work of considerable magnitude because our accounts are kept and have to be kept under the laws or we are guilty of a misdemeanor, in accordance with the Public Service Commission rules. As I have tried to indicate all along, we are trying to do everything the Committee asks, but I am informed that that is a considerable job. The other thing that Mr. Morse spoke about wanting is a statement requiring practically a statement of the entire financial and accounting transactions of the Company from its organization, going back over a period of fifteen years, and of course it is impossible to expect that we can furnish that in 24 or 48 hours.

Chairman Thompson.— We hardly expected that.

Mr. Quackenbush.— I simply wanted to say how far we had gotten along. We will furnish what I said to Mr. Gaynor yesterday and what I intended to state to you, that is, we will furnish copies of the annual reports of the Public Service Commission of New York for all of the matters covered by Mr. Morse's papers and it then becomes a matter of an accountant to turn it over into the Interstate Commerce System of Accounts.

Chairman Thompson.— You are required by the Public Service Commission to make your accounting in a particular way?

Mr. Quackenbush.— Exactly.

Chairman Thompson.— You comply with that?

Mr. Quackenbush.— We comply with the law in every respect.

Chairman Thompson.— And from that you make an annual report?

Mr. Quackenbush.— Yes.

Chairman Thompson.—And then when they get that they don't understand it themselves.

Mr. Quackenbush.— Well, of course, you don't want me to pass on that.

Chairman Thompson.— I simply want to call your attention to it. If that is the situation of the Public Service Commission, and they cannot understand them, you don't blame Mr. Morse, who wants them in another way.

Mr. Quackenbush.—As I say, we are quite willing to do that, but it is a large job. That is going to take weeks. So far as the other one is concerned, in the second statement, that calls for information which can be given I believe, in the order of its request. That we will try to give to you as we will get it.

Mr. Moss.— I suggest, Mr. Quackenbush, that you take these things that you can furnish us at once and let us have them as rapidly as possible.

Chairman Thompon.— The Committee has no actuary so you take the directions of Mr. Moss.

Mr. Quackenbush.— There is one more thing about these matters of which I confess I have no personal knowledge. The gentlemen sitting with me understood Mr. Gaynor to say as he handed over one of these exhibits that that was a transcript of what appeared in this book and I call attention to it now so as to have no misunderstanding.

Mr. Gaynor.— The transcript from this record of the expenditures preliminary to the subway route up to March 31st, 1913.

Mr. Quackenbush.— So that you will have no misunderstanding, I understand that this does not include the $125,000 which was paid after that time.

By Mr. Shuster:

Q. Has that $125,000 been certified to the Engineer at all? A. No.

Mr. Shuster.— Mr. Chairman, I would like to have Exhibit

No. 3, dated March 1st, spread on the record where it is introduced in evidence on the minutes.

Chairman Thompson.— The stenographer will spread it upon the record.

Mr. Shuster.— Mr. Chairman, I would like to read into the testimony the following, and have it follow after Exhibit 2. Memorandum for prior determination that was submitted to the engineer by Mr. Rogers and upon which purports to be the basis or evidential basis for the prior determination by the engineer of the Company's prior expenditures. I am reading from page 29 of the sub-committee's minutes:

"Memorandum-Prior Determination, Railroad I. R. T.

"Lessee's Expenses Generally

'Engineering and Superintendence':			
Fees to William Barclay Parsons at $25,000.00 per annum		$81,250.00	
Salaries of S. L. F. Deyo and Staff		45,553.67	
Salaries of Chief Engineer's Department		362.33	
Rent		1,990.14	
Miscellaneous		248.87	
			$129,405.01
'Legal Expenses':			
Fee to R. R. Rogers	$50,000.00		
Fee to Mr. Grout	17,500.00		
Fee to Delancey Nicoll	7,500.00	($2,500 of this $7,500 charged to 'Railroad')	
	$75,000.00		
from which was deducted, as chargeable to Manhattan Elevated Extensions and Improvements	$10,000.00	$65,000.00	$65,000.00
'Miscellaneous Construction Expenditures':			
To the auditor for extraordinary services	$10,000.00		
of which was charge to Extensions and Third Tracking	2,000.00	$8,000.00	
Salaries of the Administrative officers, consisting of Chairman of the Board, Vice-President and General Manager, Vice-President, Secretary, Treasurer, Auditor, Of a total of $1,532,000.00 it was considered proper to charge to the Railroad		$125,000.00	$133,000.00
Total Lessee's Expenses, submitted by Lessee			327,405.01
Interest computed on payments for 'Engineering and Superintendence'			12,324.44
Total			$339,729.45

"Note. * Miscellaneous item as reported by the company

was for the amount of $502.95. It consisted of payments made for maps, cartage, ice, water, Payroll Motive Power Department, Payroll Signal Engineer, bells, postage, prints, storm boots, coal, tin shades, petty cash bills, towel service, construction payroll account, repairing typewriter, stationery supplies and supplies. It was found that of this amount there had been expended on account of advertising not chargeable to the railroad the sum of $254.08, leaving chargeable as above entered $248.87.

"*Note.* This amount, $10,000, appears as one of the items in a summary aggregating $107,327.15; the remainder being expenses of carrying on the acceleration campaign is not chargeable to the railroad.

"*Memo.* There was submitted also a list of vouchers giving details of charges to 'Interborough-Manhattan Improvements,' 'Engineering and Superintendence,' aggregating $173,022.36.

"Est. Div. 28.

"FW-MJC."

Chairman Thompson.— So that in fact from that they allowed in that prior determination that $125,000 without stating what it was.

Mr. Shuster.— Yes. It was testified by Mr. Turner of the Engineering Department of the Public Service Commission that that was agreed upon as a reasonable allowance without any specification of items.

Chairman Thompson.— Agreed upon with whom?

Mr. Shuster.— Between the engineer and the company and the Public Service Commission.

Chairman Thompson.— The engineer of the Public Service Commission and whom?

Mr. Shuster.— The Public Service Commission and the Interborough Rapid Transit Company's representatives.

Chairman Thompson.— Who was that?

Mr. Shuster.— I presume Mr. Rogers was the person.

Chairman Thompson.— You haven't any testimony as to who that is?

Mr. Shuster.— No. There were several conferences.

L. FRANK KOHLER, recalled, testified as follows:

By Mr. Moss:

Q. Exhibit No. 1 of this date, entitled "Interborough Rapid Transit Company Municipal Force Account." This is for the month of February, 1915? A. Job No. F-11, Department GA-13, Sheet No. 1.

Q. That is F. D. Allen, $400 monthly payment. I may say that this goes in columns. In the first column is the monthly compensation, second column number of days that they worked, and the third column is the amount paid them. As the amount paid is generally the amount per month, I will simply read that one column:

INTERBOROUGH RAPID TRANSIT COMPANY

MONTHLY FORCE ACCOUNT. Job No. F11
Dept. No. G. A. 13

Department of Contractor | Location | Date Month of February, 1915

Name	Rate per month	Days	Amount	Pay Roll Classification
Allen, F. S.....	$400	21	$280	Attorney
Babcock, S.	500	10	166.67	Attorney
Babcock, D. E...	75	30	75	Canvasser
Barber, Benn ...	125	30	125	Attorney
Beery, P. W.....	300	24	240	Chief of Division
Bower, W. A....	150	21	105	Attorney
Brennan, J. P...	616.66	30	616.66	Attorney
Burke, M. E.....	50	30	50	Asst. General Atty.
Calhoun, H. G...	135	30	135	Canvasser

Name	Rate per month	Days	Amount	Pay Roll Classification
Carpenter, L. S..	225	24	180	Attorney
Caskie, John J. H.	225	30	225	Canvasser
Chapman, E. J...	60	30	60	Clerk
Cole, A. H.....	500	30	500	Attorney
Cooke, E. F.....	110	30	110	Canvasser
Crowley, Donald .	85	30	85	Canvasser
Darrow, J. A....	135	30	135	Canvasser
Davis, Cecelia ...	86	21	60.20	Stenographer
Eadie, Stephanie .	86	21	60.20	Stenographer
Edwards, J. C...	500	30	500	Attorney
Ely, Alfred	200	30	200	Attorney
Esmond, J. J....	100	30	100	Canvasser
Field, Robt. S...	110	21	77	File Clerk
Foley, Chas. V...	100	30	100	Investigator
Fox, M. F.....	125	22	92	Examiner
Fraser, R. J.....	175	30	175	Canvasser
Coetze, Theo	100	30	100	Adjuster
Gordon, Frank B.	135	30	135	Canvasser
Green, Clinton ..	50	30	50	Stenographer
Green, J. S.....	100	30	100	Canvasser
Hanavan, G. B...	50	30	50	Attorney
Jackson, W. S...	400	30	400	Attorney
Johnston, B. F...	135	30	135	Canvasser
Kelly, E. D.....	200	30	200	Canvasser
Lacombe, R. T...	85	30	85	Canvasser
Lynch, P.	100	30	100	Canvasser
McCue, E. V....	30	30	30	Clerk
McLean, J. H...	100	30	100	Canvasser
McLenathan, H.W	200	30	200	Attorney
Morriss, A. W...	200	30	200	Canvasser
Murphy, M. J....	100	30	100	Canvasser
Netter, Hy.	110	30	110	Canvasser
Beuberger, G. ...	85	3	85	Canvasser
Nichols, J. C....	750	16½	412	Attorney
O'Neill, R. J....	135	30	135	Canvasser

Name	Rate per month	Days	Amount	Pay Roll Classification
Pensel, E.	200	22	147.50	Clerk
Poirot, Camille H.	75	30	75	Typist
Purdy, J. R.....	100	30	100	Canvasser
Quackenbush, J. L.	500	24	400	General Atty.
Robinson, C. A...	25	30	25	Asst. to Genl. Atty.
Robinson, W. J..	80	30	80	Stenographer
Ryan, W. H.....	110	30	110	Stenographer
Sickels, J. E....	300	22½	225	Attorney
Slattery, T.	100	30	100	Investigator
Southard, F. H..	125	30	125	Clerk
Smith, H. J.....	50	30	50	Attorney
Smith, C. V.....	25	30	25	Attorney
Streble, Jos.	110	30	110	Stenographer
Swatton, W. H...	110	21	77	Clerk
Tracy, D. J.....	85	30	85	Canvasser
Van Dervoot, A. O.	125	30	125	Canvasser
Watson, F. G....	50	30	50	Attorney
Waugh, T. L....	50	30	50	Attorney
Williams, F. S...	400	221/7	295	Attorney

Public Service Commission,
1st District. Total, $9,434.73

Interborough Rapid Transit Co.
Correct..... J. L. Q.....
General Attorney.

Engineering: 165 Broadway, Room 1406.
Rep. Office; Easement Div., Room 1406. Feb. 5, 1915.

Rice, W. G.....	$2.85	7/10	$1.99	Carpenter

Total, $1.99

Interborough Rapid Transit Co.
Correct, C. H. Decker,
Chief Time Clerk.

Rice, W. F.....	$2.85	2/10	$0.57	Carpenter

Total, $0.57

Interborough Rapid Transit Co.
Correct, C. H. Decker,
Chief Time Clerk.

Mr. Quackenbush.—Mr. Chairman, may I make an observation about that. That is a year ago. I was going to ask if this is the same because when you read the figures I recall there were changes. I recall that at that time the charges were only as a portion of the time of these attorneys devoted to this particular line of business.

Q. You would say that they would vary? A. Yes. For instance, some of them getting $50.00. That would mean that he devoted services to the extent of $50.00 for the month.

Q. How about these $400.00 men? A. They were probably devoting their exclusive time to that.

Q. Have you a more exclusive list? A. (No answer by Mr. Quackenbush.)

Chairman Thompson.— Is that Jackson the ex-Attorney General?

Mr. Quackenbush.— Yes, sir.

Assemblyman Feinberg.— I don't want any misunderstanding in this matter. He referred to this document before showing that I was a member of a Commission and left the impression that I had some interest in these figures. He knows that I am appointed by the Supereme Court and have no interest in the proceeding at all. I merely fix the damage as a Condemnation Commission and do not have any interest in the proceeding.

Mr. Quackenbush.— That is true.

Mr. Moss.— Mr. Quackenbush, the list which I will read in evidence is February, 1915, and it totals $9,434.75. The list which you hand me of February, 1916, totals $10,763.66.

Mr. Quackenbush.— I should say the average should be about $10,000, and it would vary in accordance with the time devoted.

Mr. Moss.— It is true these items have increased your salary.

Mr. Quackenbush.— That part of my salary charged in that.

Mr. Moss.— Your salary is not increased on this account?

Mr. Quackenbush.— No.

Chairman Thompson.— Nor won't decrease when this is done?

Mr. Quackenbush.— Not with my consent.

Mr. Moss.— Well, $500.00 of your salary is charged in this force account. Are you receiving the time salary, same annual salary, that you received before there was any force account?

Mr. Quackenbush.— Yes.

Mr. Moss.— Before you had to oversee this kind of work you were getting the time salary, were you not?

Mr. Quackenbush.— I think not.

Mr. Moss.— Well, has your annual salary been increased by this?

Mr. Quackenbush.— That is correct. My annual salary has been increased by this. I stated here on the record when the matter was up before, giving the details in regard to my salary —

Mr. Moss.— Well, just give us the figures before the third-tracking began, what were they per year?

Mr. Quackenbush.— $39,000 from all sources of these railroads. You are not inquiring about any other source except the railroads.

Mr. Moss.— What are they now?

Mr. Quackenbush.— $45,000.

Mr. Moss.— So this was considered to be an addition to your labors and therefore an addition to your salary?

Mr. Quackenbush.— It certain is. I think you are right. Unfortunately, I made an incorrect statement.

By Mr. Moss: (Of Witness Kohler.)

Q. Does this, Mr. Kohler (indicating document to witness) represent in substance all of the charges that come before your Public Service Commission for approval, on account of the third tracking? A. No, sir.

Q. What other ones? A. We have all charges for labor and material, for engineering and superintendence and taxes, interest and damages. I think that is about all of them.

Q. Now these papers which you have handed me in a folder (indicating) are entitled "Interborough Rapid Transit Company Third Tracking of Elevated Lines." In what respect does this which I am now holding in the folder, differ from the exhibits which I read? A. The papers in the folder represent monthly statements which the Company submits to us, giving in detail the charges of the several job numbers which have been established to cover the cost of this third-tracking work and this Force account, forms one or more of the items under those job numbers.

Q. Well, now, do these Force accounts give all the lawyers that were engaged in the third-tracking account? A. This particular one, I couldn't say that. I will say that all of the lawyers on this Force account are charged to Job No. F-11.

Q. I have just now turned to, I happened to open to it, one of these punk slips, Job No. F-11, Sheet No. 113, and it reads as follows: "R. E. Deyo, Services for May, 1913." You know he is a lawyer? A. Yes. That does not give all the lawyers, but it gives all of a certain department and gives the detail of certain men who are on a monthly basis and receive compensation directly from the Company, and those are the men that are referred to in there.

Q. That Mr. R. E. Deyo would not under the supervision of Mr. Quackenbush? A. As to that I do not know. Those are the men that are on the pay roll.

Chairman Thompson.— Do you have outside counsel in this business also?

Mr. Quackenbush.— Mr. Deyo, you might call him so, but for

the last thirty days he has been connected with the Manhattan Elevated.

(Questions asked Mr. Quackenbush.)

Q. Do you know what service Mr. Deyo is performing? A. Yes.

Q. What is the general nature? A. I have a committee that meets with me regularly to consider all these questions, all the litigation, not only the present litigation, but you must understand we have a great volume of business going back over the past several years and Mr. Deyo is one of that committee.

By Mr. Moss:

Q. That in reference to the third-tracking?

Mr. Quackenbush.— That is his portion charge.

Mr. Moss.— Is he getting a larger salary than he did before?

Mr. Quackenbush.— He is getting $5,000 a year.

Mr. Moss.— Before he was getting $5,000, when he did not have the third-tracking to do and this charge seems to be swung in now on the third-tracking.

Mr. Quackenbush.— That is because the greater portion of his time is now devoted to this matter of third-tracking.

Mr. Moss.— If he was not doing the third-tracking business, so far as you know, he would have the $5,000 just the same, would he not?

Mr. Quackenbush.— No, because we are getting that pretty well cleaned up. I considered him for this position because of his experience.

Mr. Moss.— Mr. Quigg does not appear on these sheets?

Mr. Quackenbush.— I think not. I have talked with him about it and asked his advice, but have no recollection of any charge of his in this direction.

By Mr. Moss:

Q. I find in some of these pink slips, Mr. Kohler, R. E. Simons,

who is not a lawyer. A. That I couldn't say. He is a real estate expert, if I recall correctly. As far as I can say, his compensation is $10,000 a year.

Mr. Quackenbush.— I might state in that connection, Mr. Chairman, when we started in to organize as to this volume of litigation, I wanted to have somebody who could advise with me about the reliable and competent real estate experts in various portions of the City to whom we could leave the settlement of things in these localities, and I also wanted a man whose general knowledge of real estate conditions were such that he could cover the whole ground, and I considered the names of a great many men whom I will not mention and I considered Mr. Simons was the best man to handle the thing. Mr. Simons sits with me on the Advisory Committee mentioned and Mr. Simons supervises the work of all the real estate experts who are making appraisals for our information and decides in making settlements and many of them will appear as expert witnesses before the Commission. Mr. Simons is the Clearing House between myself and the other real estate experts.

Mr. Moss.— Then there are other real estate experts besides Mr. Simons?

Mr. Quackenbush.— Yes.

Mr. Moss.— Have you a separate list of those?

Mr. Quackenbush.— No.

By Mr. Moss:

Q. How would they come in? A. If there were any charges they would be amongst these items.

Mr. Quackenbush.— They would come in, Mr. Moss, probably as they rendered services.

Mr. Kohler.— Only as they rendered services.

By Chairman Thompson:

Q. Are there any vouchers there that you have for acceleration? A. No, there are none that I know of, but we have one voucher

to which exception has been taken that might indicate along that line. I don't know that we have the explanation of the Company of it, but we have objected to it, I might say.

Q. What do you mean by acceleration?

Mr. Moss.— I was a little timid about asking it, and more timid about defining it.

By Mr. Moss:

Q. Well, what was the matter of acceleration that you speak of, Mr. Kohler? A. There was an item on Voucher A-1600 amounting to $60.00, which is a payment to the Harlem Magazine, which states on the front that it is the official organ of the Harlem Board of Commissions, and it appears that this item is in payment for an article on pages 26 and 27 of its issue for January, 1913, by William S. Jackson, former State Attorney-General, in which one paragraph refers to the new third-tracking and there is also a voucher, A-1635, amounting to $10.10, which is a payment to the same magazine for one hundred copies of its issue containing this article. I was going to state what we had done with that. We have taken exception to that matter and under date of February 4th wrote to the Auditor of the Interborough Rapid Transit Company, stating these charges are not proper charges at cost. We wrote, "Will you kindly let me know on what Journal entry these items are credited, and submit a copy of the same in the usual manner." As a reply to that letter, under date of February 27th, Mr. Gaylor replies: "We acknowledge receipt of your letter of the 4th inst., requesting that we credit Job No. F-11 with the amount charged for an article appearing in the January, 1913, issue of the Harlem Magazine, $60.00 and for $10.10 for copies of that magazine. That our records may be complete we should have on file a statement of the reasons why, in your opinion, these items are not proper charges of cost, and we would thank you to advise us on this point at an early date." In reply to that we wrote under date of February 23, 1916: "In connection with the items of $60.00 and $10.00 paid to the Harlem Magazine and charged on the statement for Job F-11, it appears that the making of these payments amount to the anticipating of favorable com-

ment in Harlem, which is a species of acceleration of the public opinion, which cannot be approved by the Commission.

Will you therefore kindly let me know what journal entry this item was credited out, and submit a copy."

Q. Is that the last letter? What is the date of that? A. February 23rd, 1916, and it is the last letter on the subject.

Mr. Quackenbush.— This is the first information that I have had of any objection being taken, and if any objection has been taken to $60.00 out of the hundreds of thousands involved, I want to have it explained. As I have said to the Committee, and I have said it sincerely, there has not been anything, no matter how you define it, that may be termed accelerating in anything in my dealings. Now regarding these two items, I can only tell you the substance, which had to do with the general development of Harlem as a result of the improvements of the Elevated Railroad. The argument being that the third-tracking of the Elevated Railroad would increase the values of Harlem property around 125th street. That it was going to make it a new center and that the property owners would have the benefit. The purpose of it was to endeavor to get before the public our contention that we were benefiting their property rather than damaging it, so that we would be able to go ahead and make these settlements, which I have said to you we have made with sixty per cent. of the people. I don't agree myself, speaking for myself, with the construction that has been put upon it.

By Mr. Moss:

Q. Is that the only acceleration there is? A. That is the only one I have ever heard of.

Mr. Quackenbush.— I want it understood, so far as I am concerned, that whenever I have issued a communication to the public in this community on behalf of the railroad, it has been known that it was on behalf of the railroad. I understand by acceleration that, for instance, if the railroad wanted something and got up a meeting of citizens and some distinguished resident of the locality got up and made a red-hot speech for the railroad without disclosing the fact that at the time he was on the payroll of the Commission.

Chairman Thompson.— I understand you have on your force an expert on that.

Mr. Quackenbush.— I have heard a lot about that, but I want to say this. The gentleman to whom you referm and he is pretty well known to everybody, Mr. Quigg, has not had anything to do with our public deals in the eight years he has been under my supervision, nothing to do with public officers of any kind or character. His business has been to conduct our litigation and from time to time to advise with me about conditions that exist. The whole time in our fight we had with the B. R. T. he had nothing to do with it. I think it is only fair that I should make that statement.

By Mr. Moss:

Q. In what account does ice water and spring water that is used in the third-tracking go? A. It depends in what office such things are used. If it is an egineer's office it is charged to that. If it is in the legal office it is charged to that. That is no great expense, because it is generally considered a part of the expense of running an office. It is the usual charge part of the expense of the office, the same as gas, electricity or rent, etc.

Q. That's all right, but something got away. All these papers are here, are they not? A. Everything is here.

Mr. Moss.— I want to make sure that the entire cost of operation is in the bills. Mr. Quackenbush, are there any other services of yours that have come into these pink vouchers, do you know? I see petty cash frequently, which I suppose would come in regular form. Are there any services charged?

Mr. Quackenbush.— Do you mean me as an individual or the department? If you mean me as an individual, there is nothing for me except as comes in on the payroll. So far as the department is concerned there may have been a great many things.

Mr. Moss.— My question is, whether this is cash disbursement, or whether there was any of the salaries charged?

Mr. Quackenbush.— No others that I can think of beyond those you have mentioned, that of Mr. Deyo and Mr. Simons.

Mr. Moss.— Now here on Sheet 8-1914, Job F-11, is the entry "J. L. Quackenbush, General Attorney, charge record GA-79, $170.51." Have you any idea from the—

Mr. Kohler.— I might say, if I am permitted, that in connection with this matter of the direct charge records, they are submitted to the Commission, and on such direct charge records are the items for which this is an expense. I have some of those here, which I cannot say cover that particular item which you spoke of, but there is a sample of one. (Witness delivers copy of paper to counsel). That covers printing.

Mr. Moss.— Here is another one for printing of condemnation statements and different forms. Here is $25.00, letters from New York Lawyers Club. What is that, do you know?

Mr. Quackenbush.— I can answer that. There was an article in the Hearld announcing the fact that a certain condemnation commission had made awards of six cents damages either at 86th Street and 9th Avenue or 38 Street and 6th Avenue and that information was deemed by us important to the property owners. We procured it and sent it to the property owners so that they might know they didn't always get the large sums their attorneys promised them.

I didn't answer your first question. I think, Mr. Moss, that all of these various items that you refer to, if they have odd numbers, are probably bills that are charged to me in some way but all of which goes to the department.

Mr. Moss.— This item here, "Garrett Cullen, who was formerly one of the lawyers for you, was he?

Mr. Quackenbush.— One of the lawyers who was doing the work with us.

Mr. Moss.— Who is Garrett Cullen?

Mr. Quackenbush.— Garrett Cullen was an attorney in the office for a great many years. He came up there as a young man and started out in business for myself, and at the time we were organizing this division he was employed to do the work of canvass-

ing and as we got the thing in hand his services ceased. I may say to you that when the surface lines made it necessary for me to reduce a number of lawyers I said to the men that when we go into the work I should give them the first opportunity, and Cullen was one of them.

Mr. Moss.— Mr. Chairman, if you want to go further with this, we will pursue it in sub-committee, and you, Mr. Kohler, will co-operate in anything we want?

Mr. Kohler.— Certainly.

Mr. Shuster.— Mr. Chairman, in order to get from the sub-committee's record into this subject of the main record I would like to introduce at this point and have written in the record what seems to be additional memorandums from Mr. Rogers to Mr. Coleman, dated July 29th, 1913. This I take it is for the purpose largely of determining or getting advice on the legal and administrative services.

"July 29, 1913.

"Interborough Rapid Transit Company Memorandum of Amounts Expended in Connection with the Proposed Subway Routes of March 31, 1913, as shown on attached summary dated July 5, 1913.

"Engineering and superintendence..... $129,659.09

"These charges cover the payment of salaries to Mr. S. L. F. Deyo and his staff for the time devoted by them to Subway Propositions, together with the rental and incidental expenses of his office, from May 1, 1909, to March 1, 1913, and the salary of Mr. William Barclay Parsons as consulting engineer, from January 1, 1910 to March 31, 1913.

"Administration $107,327.15

(In pencil: $10,000.)

"These charges are almost entirely the expenses of the Publicity campaign in 1910 and 1911, with the exception of $10,000 paid to the Auditor for extraordinary services, etc.

"For the period from March 1, 1909 to March, 1913, the salaries and incidental expenses of General Officers, viz.:

Chairman of the Board, President, Vice-President and General Manager, Vice-President, Secretary, Treasurer, Auditor, together with the salaries and incidental expenses of their staffs, amounted to $1,532,000. No portion of this amount has been charged to 'Proposed Subway Routes.'

'Legal expenses . . . . . $75,000 (in pencil)

" Obtained from the Auditor's office, July 25, 1913.

(In pencil): Distributed as shown in Mr. Coleman's Memo.

" (In pencil): D. L. T. (364659.09).

" (In ink): (Pencil figures, etc., so on original.)"

By Mr. Shuster:

Q. Mr. Kohler, the details of Engineering and Superintendence were checked over by your Department? A. Yes.

Q. And these were the only details and vouchers which your department checked over of this prior determination? A. Yes.

Q. And your department is the one department that checks the original vouchers in connection with determinations under the contract? A. Yes.

Mr. Shuster.— Mr. Chairman, I would also like to read into the record the following testimony which appears on the minutes of the sub-committee:

" COPY "

" July 31, 1913.

" Memorandum for Mr. Coleman:

" In connection with Mr. Turner's investigations, the following observations should be made with respect to the allowances aggreed upon for the cost of subway and elevated improvements and extensions:

" 1. Attorney's fees, $75,000 was allowed as follows: fee to R. R. Rogers, $50,000; to Mr. Grout, $17,500; and to Mr. Delancey Nicoll, $7,500; total $75,000. Of this amount $65,000 was charged against the subway, and $10,000 was to be distributed between the Manhattan Elevated extensions and improvements in the proportions of their cost.

" Against the Manhattan Elevated, $15,000 specific charges were approved against the extensions. Of the foregoing

amounts everything has been paid except my fee and Judge Dillon's fee—these having been, however, agreed upon. Mr. Nicoll's bill has not been distributed upon the books of the company, but will be distributed on Mr. Gaynor's return.

"2. General Superintendence.—On this item $125,000 has actually been paid and $25,000 is held in reserve to be distributed out of the general services of the engineering and operating staff.

"The remainder of the items represented by the detailed bills submitted have all been paid, and will be found properly entered upon the books of the company.

"This memorandum I write at your suggestion, in order that Mr. Turner in looking over the matter may understand the status of our books.

"R. R. ROGERS.

"The following appears endorsed on the memorandum in Mr. Coleman's own handwriting:

"Mr. Turner:

"I ask Mr. Rogers to put his ideas on paper and he has handed me this memorandum. At our conference yesterday the subjects of legal fees and superintendence and engineering were discussed and certain figures tentatively considered. As to the *legal fees* I regard them as reasonable compared with the fees usually paid to lawyers for similar services by large corporations.

"As to the services of the administrative officers I am not prepared to pass on their value. Same comparison may be made with the allowance to the *N. Y. Municipal R. C., July* 31, 1913. G. S. C."

Mr. Shuster.— That completes all data here for the purpose of the main record.

Mr. Moss.— How long has Mr. Simons been on your payroll for $10,000?

Mr. Quackenbush.— My recollection is it was about midsummer of 1913, a little over two years.

Chairman Thompson.— Has he been working with the same thing?

Mr. Quackenbush.— I organized a Bureau very shortly after.

Chairman Thompson.— Did he appear before the Board of Estimate in any matter?

Mr. Quackenbush.— Not that I recall.

Chairman Thompson.— Since 1913?

Mr. Quackenbush.— Not that I know of.

Chairman Thompson.— Did he before that?

Mr. Quackenbush.— Oh, he had a good deal to do with the whole subway situation and that is one of the reasons why we employed him. Mr. Simons was very active in all of these public matters pertaining to the subways. He had large interests in the Bronx that he was looking after himself. He was not friendly with us all the time.

Chairman Thompson.— We will suspend now until March 2nd, 1916.

(Whereupon the Committee adjourned until tomorrow morning, March 2nd, 1916, at 11 o'clock A. M.)

MARCH 2, 1916 — 11:56 A. M.

NEW YORK COUNTY LAWYERS' ASSOCIATION, 165 BROADWAY.

The Committee was called to order pursuant to adjournment.

Assemblyman Feinberg in the Chair.

ALFRED CRAVEN, recalled, testified as follows:

Acting Chairman Feinberg.— Mr. Craven has been sworn in this proceeding before?

Mr. Shuster.— I believe he has.

Mr. Moss.— Before the General Committee?

Mr. Shuster.— Yes.

By Mr. Shuster:

Q. You are the Chief Engineer of the Commission, of the First District? A. I am, sir.

Q. And when were you appointed? A. Appointed in October, 1911, as Chief Engineer.

Q. And you have continued to be the Chief Engineer down to the present time? A. I have, sir.

Q. You are familiar with the prior determination made in connection with— A. In a general way, yes.

Q. And particularly the determination made with the Interborough? A. Yes, sir.

Q. Do you recall the date of that? A. The prior determination was made I think in October, 1913.

Q. Yes. October 14. A. I think it was October, yes.

Q. Well, now, will you please tell us just what that prior determination is? A. It is meant to cover the expenditure by the Commission, certain expenditures by the Commission, and by the operating company prior to the signing of the dual contracts.

Q. And the date of the dual contracts with the Interborough is— A. March 13, I think, 1913.

Q. March 19, 1913? A. March 19, 1913.

Q. Will you state just what method you pursued in making this determination? A. Well, in a general way the—

Q. We would like to have it specific. A. Well, the expenditures that were made by the Commission back, extending back as far as, I think, as 1907, were taken from the records as far as they concerned the routes, subways and other roads, being a part of the Interborough's work, were gone over, and whatever expenditures were considered proper were charged up in this prior determination against the City. The Interborough Company also submitted to the Commission certain expenditures made by them. They were included in this determination.

Q. To whom did they submit their statements? A. They were submitted to me.

Q. And what was the nature of the proof that they submitted, of their expenditures to you? A. What?

Q. What was the nature of the proof that they submitted to you for your determination? What did it consist of? A. Why, it consisted of their expenditure, their legal expenditure, engineering expenditures, and real estate.

Q. Well, now, Mr. Craven, we know what it consists of. I want to know what proof of the expenditure was laid before you by the Interborough Company, upon which you made this prior determination? A. That came to me from our Accounting Department, who went to the Interborough Company, and went through their accounts and books, and investigated the details for the expenditures that they claimed to have made.

Q. When was that done? A. Well, that was done along through the summer of 1913, extended over a considerable period of time. I don't know just how long.

Q. Were they there at your instruction? A. Yes, sir.

Q. And that was the accounting department? A. That was the accounting department.

Q. And who were the employees or officers who made that investigation? A. Mr. Turner, Daniel Turner, has charge of the accounting department and he has under him his chief accountant, Mr. Kohler, and also a Mr. Willcock. They are the ones that made an investigation of the vouchers and payments and claims made by the Interborough Company.

Q. And then did they report to you? A. They reported to me.

Q. Have you that report? A. The report is included in the determination. The details of it are all on the files of the Commission. They are very extensive, very voluminous.

Q. You have them with you this morning? A. I believe Mr. Turner has them. I am not sure if he has them. They are very voluminous. They are at your disposal. I don't know whether they are here or not.

Q. And that was an investigation by the accounting department of the Commission? A. Yes.

Q. Covered all of the items allowed or charged against the Interborough Company's contribution in the determination? A. Under the accounting department, that portion of it under me — it covers certain items. There were other items that were submitted and gone over by Dr. Weber, who is the general accountant

of the Commission. Others came from the Secretary. Others came from the Legal Department.

Q. Well, will you get those records and identify what you are talking about, so that we can know? A. Will I get what?

Q. Mr. Turner is right behind you. You say he has the records. (Papers handed to witness by Mr. Turner.)

Mr. Moss.— Is Mr. Shepard here? Mr. Shepard? (No response.)

By Mr. Shuster:

Q. Just let Mr. Coleman pick out the papers for us, that he rendered his decision on — if you will just indicate what of those papers you made your determination on, we will be obliged to you.

Acting Chairman Feinberg.— Mr. Craven, you mean?

Q. Yes, Mr. Craven. A. In what portion of the determination. These are only a portion of them.

Q. You made a determination under date of October 14, 1913, known as the prior determination? ? A. Yes, I did.

Q. And that is now final and conclusive on both the City and the lessee, is that true?? A. So I understand, yes, sir.

Q. Now, upon what evidence did you base your determination of the share of the Interborough Company?

(Chairman Thompson takes the chair.)

(Witness looks over papers, and turns to Mr. Turner.)

By Mr. Shuster:

Q. Never mind. Mr. Coleman, we want to know what you know about this, not what Mr. Turner knows about it.

Mr. Coleman.— It is Mr. Craven testifying. A. The first item I find here in reference to the prior determination is — I think it came from the Interborough Company.

Q. Well, don't you know where it came from? A. Came from the Interborough Company.

Q. To you? A. Auditor's office — from the Interborough Company, Auditor's office, July 25, 1913. It is memorandum of amounts expended in connection with the proposed subway routes

to March 31, 1913, as shown on attached summary dated July 5, 1913. There is an item of Engineering and Superintendence, $129,659.09. These charges cover the payment of salaries to Mr. S. L. F. Deyo and his staff for the time devoted by them to subway propositions, together with the rental and incidental expenses of his office, from May 1, 1909, to March 1, 1913, and the salary of Mr. William Barclay Parsons, as consulting engineer, from January 1, 1910, to March 31, 1913. The next item is Administration. The item as claimed was $107,327.15. I might add that this was the memorandum brought by Mr. Rogers and taken up by Mr. Kohler and Mr. Turner, as representing me in reference to these items.

Q. Well, what did you do with regard to it? A. Only approved it after it had been brought to me by Mr. Turner. I was not present at this conference.

Q. Are we to understand all you did was to approve whatever Mr. Turner submitted? A. After having it properly explained to me, yes, sir.

Q. Well, what, if any, explanations were made to you by Mr. Turner or anybody else in regard to that memorandum you have been reading from? A. I went over it at the time with Mr. Turner, and was satisfied with his explanation of what had taken place there, and approved the items as given here.

Q. Now, do we understand that this memorandum which was submitted by Mr. Rodgers of the Interborough to you, is the evidence upon which you made your determination? A. Certain parts of it, yes.

Q. Well, which parts? A. This item Administration was $107,000, of which $10,000 we approved. That $10,000 was amounts that were paid by the Interborough Company to the Auditor, Mr. Gaynor — for his certain duties that he performed during this period that were outside of his regular work.

Q. Do you recall what date that memorandum came to your possession? A. What?

Q. Do you recall what date that memorandum came to your possession? A. No, sir, I do not. It must have been within a few days after this conference.

Q. And in what manner did it come to you? A. By Mr. Turner.

Q. By Mr. Turner? A. Yes.

Q. And not from Mr. Rodgers? A. No.

Q. Do you know where that originated, that memorandum? A. I only know — at the bottom here — it is obtained from the Auditor's office on July 25, 1913.

Q. Is that all you know about it?? A. That is all I know about it.

Q. And upon that character of proof, an unsigned statement, setting forth certain figures and statements, you based your determination of these costs? A. Partly so.

Q. Partly so? A. Yes.

Q. Mr. Craven, under the contract, you are the final arbiter on all these costs? ? A. I am.

Q. And can you tell us — the purpose of these determinations was they are required in the contract? A. They are required so as to determine the amount of moneys that shall be charged up against the dual contract system.

Q. Well, what is the object of making determination? A. So as to see what money shall be charged against the City for construction and equipment.

Q. That is the object of these determinations? A. Yes.

Q. And were these charged to any particular routes? A. They were. They were separated according to the different routes.

Q. Can you tell me which routes? A. Well, I cannot recall. I cannot tell you off hand.

Q. Mr. Craven, how much personal attention did you give to this matter of the prior determination? A. Why, I went through it as far as I thought was necessary, to satisfy myself.

Q. Just tell us how far you thought was necessary? A. Well, I examined the determination as made out there. I didn't go into the minor details of it. It was simply impossible for me to be an accountant myself. I depended on my accountants.

Q. Well, have you any details on any of those gross items there except superintendence and engineering? A. Yes, there is — I don't know whether it is in this file or not. I have a long memorandum in reference to items — and for the departments I have — yes — that $107,000 was made up of a great many different items, all of which were stricken out, excepting the $10,000 which was allowed to Mr. Gaynor's account.

Q. And can you tell us why they were stricken out? A. Because we did not think they were proper charges against the work.

Q. Do you recall what the items were? A. Indeed, I don't. A great many items. That is a matter of record. I don't know whether it is in this file or not.

Q. Now, what part of the prior determination do you take personal responsibility for? A. All of it.

Q. All of it. Did you have any conference with any of the Interborough officers with regard to this matter? A. I don't recall that I had any conference with them.

Q. What was done with your determination after it was finished and signed and served? A. After it was finished and signed, it was sent to the Commission, it was sent to —

Q. I understand that. After it was served what was then done, by you? A. That was the end of it, as far as I was concerned.

Q. You have done nothing further since that in regard to the — A. Prior determination?

Q. Prior determination. You didn't know objections were filed to your determination? A. Objections were filed by the Commission — or by the Interborough Company.

Q. Well, now, which is it? A. The objections were filed by the Commission, and afterwards they withdrew those objections.

Q. Had you any personal work in connection with the objections? A. No.

Q. And handling those objections? A. No.

Q. What are your duties where there was objections filed? A. They come back from the Commission for me, from the Commission to me — if the objections still continue, then I have to reconsider them.

Q. Well, these objections must have come back to you? A. No, they didn't.

Q. Oh, they didn't? A. No.

Q. You are the one with whom objections should be filed, are you not? A. Well, they did come to me, but I didn't do anything about it, because they were held up by the Commission. Afterwards there was a stipulation for the extension of time to consider these objections. They were extended from month to month, until I think —

Q. That was for your convenience? A. No, sir,

Q. What was the occasion for an extension on objections? A. I cannot recall particularly what the occasion was.

Q. Do you know anything about that? A. That stipulation was extended from month to month, until the spring of 1914, and the Commission finally withdrew their objections which made the de-determination valid.

Q. Did you advise with the Commission in regard to the re-scinding of their objections? A. I cannot recall having advised with them at all.

Q. You have no recollection as to that? A. No, sir.

Q. Well, what is your best recollection? A. My best recollection is that I did not advise with them, owing to the fact that from time to time the stipulation was extended until finally they were withdrawn. There is one thing I wish to say about this file. I returned to my office yesterday morning and I have not had time to look through all the details of it, as I would like to have done.

Q. Now, Mr. Craven, what particular items of the determination were fixed as a result of your personal attention and investigation, aside from that of Mr. Turner or the Accounting Department? A. I cannot —

Q. You can specify the items? A. No.

Q. Here is a copy of your determination. A. I cannot specify now. I would have to go back and have time to look through all these records and familiarize myself with something that happened two or three years ago. I cannot answer off hand now. I have no objection to doing so, but I cannot — I cannot remember what happened.

Q. So there is not anyone of these items which you now can specify as having been personally determined by you from your own investigation? A. I don't know exactly what you mean by my own investigation. I went through the determinations and through such data as were available at the time that I considered necessary, and gave them proper consideration.

Q. But the principal information you had is contained in this unsigned memorandum, isn't it? A. Regarding those items, yes, sir.

Q. And that is substantially all that you had before you? A. In regard to those items, and the explanations that Mr. Turner made at the time. I cannot recall just what they were; however, they were sufficient to satisfy me that the determination I made on those particular items was a proper one.

Q. You had no sworn statements of payments and expenditures by the Interborough Company in regard to this matter, had you? A. No sworn statements. The only statements I know of were as far as the accountants went through the Interborough books and vouchers, and so on.

Q. This matter was taken care of in a very informal manner? A. A very formal manner, very careful manner.

Q. Well, do you know that of your own knowledge? A. I do know this accounting department was digging into the Interborough books and going through all their vouchers and everything that was necessary.

Q. Do you know which ones of those items the accountants went through the Interborough books on? A. Well, I think that the — I think there is a list of this matter of $107,000, which he went through the Interborough books to find out about them.

Q. About all of those items? A. Yes, I think he went through them all. I cannot state positively.

Q. You don't know of your own knowledge they made any investigation, except as you have been told? A. That is all I do know.

Q. Either by Mr. Turner or by some accountant? A. Yes, he gave me assurance that these items had all been investigated.

Q. That assurance was by word of mouth conveyed to you? A. Yes.

Q. And not a matter of any record? A. Well, the file is full of records. I don't know just what is in it. As I said before, I have not had time to familiarize myself with this —

Q. Well, as a matter of fact, you relied on Mr. Turner and the accountant department? A. I do rely on them, yes.

Q. You did in this instance? A. Yes, sir.

Q. Without any exact knowledge as to whether or not the expenditures had been actually made or not? A. I always felt sure they had been made.

Q. Why? A. I was satisfied that they were not giving me information that they had not been investigating. I have confidence in those gentlemen.

Q. Will you let me take that memorandum, please? Just hand me your file.

Chairman Thompson.— What gentlemen do you mean?

(File of papers handed to counsel.)

Chairman Thompson.— Who do you mean by "they"?

Mr. Craven.— Mr. Turner and Mr. Kohler. Dr. Weber. The real estate department.

By Mr. Shuster:

Q. When this memorandum came to you did it have all of the lead pencil memorandum on it that it now has? A. I am pretty sure that it did. I don't believe anything has been added to it since, or taken from it.

Q. It is your understanding that this memorandum was submitted by Mr. Rodgers, the counsel for the Interborough? A. That is my understanding of the matter, yes, sir.

Q. To whom did he deliver that? A. I understood he took it to Mr. Coleman.

Q. The counsel of the Public Service Commission? A. The counsel of the Public Service Commission and they held a conference at which Mr. Turner represented me.

Q. Do you know whether or not the accountants or Mr. Turner checked up the administration items from the vouchers of the company? A. Which items do you refer to?

Q. Your administration items here? A. That $107,000?

Q. Yes. A. I understood it was subsequently checked up by Mr. Kohler. I think there is a statement of it in that file. I am not sure of it, but I have seen the statement.

Q. Would you be surprised to know that Mr. Kohler only checked up the engineering and superintendence from the vouchers? A. Well, now, you are getting at a different proposition. That item — I am pretty sure that —

Q. Now, Mr. Craven, you could answer that question. A. Mr. Koehler can answer that question best himself, sir.

Q. I wish you to answer it. A. I cannot answer it.

Q. Mr. Kohler already has answered it. A. I cannot answer it. By Chairman Thompson:

Q. Why not? A. Because I don't know whether he did or not. I know he went through what was necessary to check it.

Q. How do you know that? A. Because Mr. Turner on that date, he said —

Q. You made no investigation of your own? A. I did not go through the books, no, sir. Of course I didn't. I would not have time to go through them.

Q. You took Mr. Turner's word that he had? A. I took Mr. Turner's word that these matters, as far as they could be, had been investigated in the offices of the Interborough Company.

Q. You say as far as they could be? A. Yes, sir.

Q. Were you bound to make a determination if any investigation could not be made to satisfy you? A. There were some items there, there is one claim the Interborough made that we could not get into — that is, we could not —

Q. Tell us about that. A. It was a claim for administration, amounting to a million and some odd hundred thousand dollars.

Q. $1,532,000; is that the item? A. Yes. I guess that was the item. That we did not attempt to check up.

Q. Why? A. Because we did not — I don't think it was possible to check it up. That is, that was what I was informed. We had no figures for it.

Q. Who informed you of that item? A. Mr. Turner.

Q. Mr. Turner informed you that it was impossible to check it up? A. Not that it was impossible, but as I can recall the matter at the time, as a general proposition we did not think that they should be entitled to that much money for their expenses — for their expenses, and coming right down to the point of that matter, it was finally determined that $125,000 for construction would be a fair amount to allow on that claim.

Q. How did you arrive at the figures $125,000? A. Simply like a great many people arrive at anything.

Chairman Thompson.— No; just tell how you arrived at it.

Mr. Craven.— I did not arrive at it.

Chairman Thompson.— No; then tell them you didn't. Don't make any comparison.

Q. Did you have any item, making up that aggregate of $1,532,000? A. No.

Q. Where did you get that gross item from? A. It was simply Mr. Coleman and Mr. Turner, after consulting with Mr. Rogers about the matter, came to the conclusion that that would be a fair allowance to make on that amount of money.

Q. Did you consult with Mr. Rogers with regard to it? A. No, I didn't.

Q. Do you know upon what basis they concluded $125,000 was reasonable? A. Well, no, I don't.

Q. Was there any item of $125,000 before you? A. No, there was not; as I understand it there was no specific item covering $125,000.

Q. Do you consider that you had any evidence at all to warrant you to allow $125,000, or any amount? A. I did. I considered that was a fair settlement of a million and a half dollar claim.

Q. Well, what evidence did you have? A. I have no specific evidence in the way of figures.

Q. Who suggested the figure of $125,000? A. I don't know.

Q. Well, how — A. I think it was after —

Q. What do you know; not what you think? A. Well, I understood from Mr. Turner, who was at that conference, that that was an amount agreed upon between Mr. Rogers and Mr. Coleman and himself, as a fair allowance to make as a charge against that claim. Now, that is all I can tell you about it and on that basis I was willing to certify that determination.

Q. Well, didn't you as a matter of fact determine that they were entitled to $150,000 instead of $125,000? A. I want to explain that.

Q. No. Answer the question; yes or no will answer that? A. It is on a marginal note there; it is down $150,000.

Q. Did you make that memorandum? A. I didn't.

Q. Who did? A. I don't know.

Q. You don't know who made that memorandum in pencil of $150,000? A. I don't.

Q. This is the evidence upon which you made your determination — A. That was made in that conference with Mr. Coleman and Mr. Rodgers and Mr. Turner.

Q. How do you know that, Mr. Craven? A. Well, Mr. Turner told me it was so at the time; that is all I know.

Q. All you know about this is what Mr. Turner told you? A. That was all, and I was satisfied with his explanation.

Q. It is all you know about any of the items in connection with this determination? A. That particular part of it.

Q. What other part did you know any more about? A. I didn't — I have told you already that I didn't go through the vouchers in reference to any of those items. I gave no attention to the details.

Q. We have been trying to find out just what you did. You are the man who is responsible here, or the officer who is responsible. A. You know very well I cannot sit down and give my time to matters that it takes some twelve or fifteen men their constant time to go through the vouchers and determine those things. That is not my position, it isn't my business.

Q. That is your business under the contract? A. I have to trust to somebody to give me that information and I have perfect confidence in the men who are entrusted with the investigation of those vouchers and items in detail, and when they come to me and report to me such and such is a fact, I am satisfied with their explanation.

By Chairman Thompson:

Q. What do you do? You depend on these fellows all the while? A. I certainly have to depend on all my corps.

Q. On everything that comes before the Commission? A. I don't go into the detail myself; I can't.

Q. You simply sign whatever they put before you? A. Just as is ordinarily done in all large businesses.

Q. You get a man on the pay roll and you are satisfied he is right, and you let it go at that? A. I pay a man on the payroll — when the payroll comes to me I certify that check, I don't go into the details to find out whether he was there or not.

Q. You take whatever he does as final? A. Yes, when I was satisfied and have confidence in the man.

Q. You haven't got anybody working for you you haven't got confidence in? A. I don't go into those details, Mr. Thompson. You know well enough yourself, I can't.

Q. Is there any thing you do that isn't a detail? A. I go over the details with the — no, I don't even go over the details. I don't add up the figures.

Q. You are drawing $20,000? A. How much?

Q. $20,000? A. I am.

Q. That is the most salary paid to anybody here? A. Yes.

Q. Now, Mr. Shuster wants to know what services you perform for that $20,000, and I think you ought to be able to tell very lucidly and quickly? A. Well, you come and spend a week's time in my office, and I will show you.

Chairman Thompson.— No; strike that from the record.

By Mr. Moss:

Q. Before you proceed, Mr. Craven, aren't you a court? A. I rather take the position of court of first resort to pass on these things.

Q. Under the law, you are a court? A. Well, I am not a lawyer; I suppose I am in a way.

Q. You can do more than the Commissioners can do, can't you? A. As far as those determinations I can, yes, sir.

Q. And if the Commissioners don't like what you determine, they have to appeal, don't they? A. Yes, they have to appeal.

Q. Even though in a sense you are the subordinate? A. I am a court of first resort.

Q. Do you know of any way in which you could have served the City better than by cutting down these charges — you, in your position as a court in this case? A. Well, when I cut a charge down from a million and a half to three hundred thousand dollars —

Chairman Thompson.— Did you cut them? That is what we want to find out. And if you did, tell us how you did it. You ought to know something about it. It is a lot of money. Let's get to it.

By Mr. Moss:

Q. As I understand, you say with regard to this very matter, you depended upon your subordinates? A. Certainly.

Q. Why didn't you act yourself as the court on this matter? A. In what respect?

Q. Take this matter of $125,000. Why did you rely, in passing out that large sum of money under your O. K., why did you allow your subordinates to determine that? Why didn't you do it yourself? A. If I didn't? I did.

Q. What is it for, then? A. They reported to me the fact.

Chairman Thompson.— He asked you what is it for.

Q. What was it for? A. It was the agreement as to the amount that should be allowed for prior expenses on that item.

Q. Did you reach it by percentage? A. No.

Q. Did you reach it by suggestion? A. No.

Q. Who suggested $125,000? A. I don't know who suggested $125,000.

Q. Out of whose fertile brain did the figure of $125,000 come? A. I don't know.

Q. How did it happen to be exactly the amount that was paid to Mr. Shonts? A. I don't know.

Q. Why did the figure of $150,000 come out in pencil notes? A. It was simply, as I say, an adjustment of a large claim by an agreement that was — would be a fair allowance, from our point of view, to allow on that large claim.

Q. How did it happen, then, in pencil, that $150,000 was arrived at, which was the precise amount of the bonus to be paid to Mr. Shonts? A. I never heard of a Shonts bonus — I never heard of it until I read it in the newspapers.

Q. Can you explain those two coincidences? In the $125,000 and in the figures $150.000 that were arbitrarily arrived at, the coninicidence in its relation to the figures that were paid to Mr. Shonts, and that were to be paid to Mr. Shonts? A. I can only explain, for instance, that with a good many figures in my experience I have frequently found figures absolutely the same, made up of different items, and they would reach the same results.

Q. I am asking if it does come to your mind that somebody named those figures? A. Those were named in that conference.

Q. Were they named by you, or by your subordinates, or were they named by the other side of the conference? A. I don't know.

Q. Haven't you any recollection on it? A. No, sir.

Q. Now, as a court, you were sitting on a proposition that $125,000 be paid out or allowed? A. No; it had not been paid out.

Q. Well, it was to be allowed? A. It was to be allowed.

Q. Irrespective of the larger figure, $1,532,000, $125,000 by itself is a tidy sum? A. That was a very small sum.

Q. It is a tidy sum? A. A what — a tidy sum?

Q. It is a tidy sum, worth a court's considering? A. Well, I don't know whether it was a tidy sum or not.

Q. Did you consider it, personally? A. Well, I did not consider whether it was to go to any particular individual or not. It was an adjustment of a claim.

Q. In this bundle of papers which you have handed us is a memorandum for Mr. Coleman, dated July 31, 1913? A. Yes.

Q. Signed by Mr. Rogers. Did that come under your view? A. I guess it did at the time, very likely.

Q. Well, did it? A. I presume it did; I don't know.

Q. Now, this item of $125,000 came under general superintendence? A. Yes.

Q. Now, see what is in this memorandum that you handed over here to Mr. Shuster a moment ago. Here is a long paper, but under subdivision two is this: "General Superintendence. On this item, $125,000 has actually been paid, and $25,000 is held in reserve to be distributed out of the general services of the engineering and operating staff." Did you read that? A. I very likely did.

Q. What did it mean? A. Just what it says, I presume.

Chairman Thompson.— Well, what is that?

Mr. Craven.— Just what it says.

By Mr. Moss:

Q. "On this item, $125,000 has actually been paid." Who got that money? A. I don't know.

Q. Did you inquire? A. I presume I did — no, I don't know whether I did at the time; I cannot remember.

Q. Wasn't it important for the court to know who had got the

$125,000? A. Well, I may have been relaxed in my duties as a judge, but not being a lawyer, I probably did not give much attention.

Chairman Thompson.— Just answer it as your duty from the standpoint of a taxpayer and a citizen.

Mr. Moss.— And an engineer.

Chairman Thompson.— Don't answer as a court. A. I cannot recall just the circumstances.

Q. Well, didn't you at one time know who got the $125,000? A. I don't know whether I did or not.

Q. This letter, July 31, 1913, was before you, when you made the allowance? A. Yes, sir.

Q. Didn't you know when you consented to this allowance of $125,000, that $125,000 had been paid to Mr. Shonts? A. I did not.

Q. Well, here is the next clause: "and $25,000 is held in reserve to be distributed." A. I don't know anything about that.

Q. Did you ask who was to get that? A. No. That was to be held in reserve for a later determination, I presume.

Q. Have you ever found out Mr. Shonts got both the $125,000 and $25,000? A. Not that is in that.

Q. Didn't you write that item of $125,000 in connection with this item here in the memorandum for Mr. Coleman, signed by Mr. Rogers? A. I did; I allowed that $125,000.

Q. You allowed the $125,000? A. Yes.

Q. Knowing it would cover a payment that had actually been made? A. I presumed so at the time.

Q. And as to the $25,000 it had not been made, and you did not do anything, you did not pass anything? Well, then, leaving out Mr. Shonts, you knew $125,000 had been paid to somebody and you allowed the $125,000? A. I presumed so at the time.

Q. You presumed so, somebody. And you allowed the $125,000 to cover the payment that had been made? A. That was general expense, I understand.

Q. Well, you did it to cover the $125,000? A. Well—

Chairman Thompson.— Just answer the question. A. I don't recall that had been specifically paid to anybody excepting—

Q. You were informed that the $125,000 had been paid? A. I presume so. I don't know.

Q. You knew that was included in a big item of a million and a half, didn't you? A. I knew that $125,000 was a general allowance made on —

Q. No, no; you knew this $125,000 was a portion of a claim for a million and half, didn't you? A. Yes.

Q. Yes; and you thought if you allowed that $125,000 that had actually been paid out — A. Yes.

Q. — that was a good settlement of a claim of a million and a half, didn't you? A. That was a fair settlement, yes, sir.

Q. All right. A. I wish to state that $125,000 was not specific, and it does not say so there. It had been a great deal more than that, had been paid out. I don't know how much more. That $1,500,000 had been paid out, and on that claim, and I felt then that we were making a good settlement by allowing that $150,000 on the whole business.

By Chairman Thompson:

Q. Did you disallow the rest? A. Yes.

Q. What? A. Yes.

Q. Have you got an order disallowing it? A. Don't need any.

Q. Is there anything in the world to prevent them from presenting the rest some time? A. I don't know. If they present it in a bill I will take it up.

Q. What is left can be taken up then? A. Never in connection with the prior determination it can't.

Q. Then you are wrong when you say it has been disallowed? A. Well, it was disallowed at the time.

Q. Well, where is the order disallowing it? A. There is none.

Q. Then it has not been disallowed? We did not treat it in that way.

Q. How did you treat it — by word of mouth, or something? A. Simply allowed that much; the rest was disallowed.

Q. Tell me — I want to know how the rest was disallowed? A. It was not allowed.

Q. Well, it was not disallowed? A. That you will have to figure out for yourself.

Q. You are trying to make it appear it was disallowed. I want to know how it was disallowed? A. By not allowing it.

Q. You think that disallows it? A. Yes.

By Mr. Moss:

Q. Don't courts make orders as a rule? A. You will have to excuse me about my being a court —

By Chairman Thompson:

Q. Why didn't you put it in the order that the rest of the items were disallowed? A. I didn't think it was necessary.

Q. You didn't think it was necessary, so that leaves it open? A. No. Yes, it may be open.

By Mr. Moss:

Q. Was there any claim for a million and a half filed in words, letters or figures? A. Not in figures, no, sir.

Q. Have you got any paper over there in your department which shows that claim for a million and a half and the details of it? A. Not the details of it.

Q. Have you any papers upon which you have entered any disallowance of anything? A. No.

By Mr. Shuster:

Q. But — A. Not that I know. There may be some papers in the record there where they have checked off, disallowed items; I don't know.

Q. Mr. Craven, they had to make a claim of having expended on this work $1,532,000? A. That claim is on record somewhere; I don't know.

Q. It is in your memorandum here? A. Probably in that file. As I say, I have not had an opportuity to carefully go over that file, as I did at the time that that determination was made.

Q. How can you ever tell from any subsequent statement the company may file, whether or not you are not duplicating that $125,000? A. Well, Mr. Shuster, if they make any claims, specific claims in detail, we will look into them and find out whether they are proper, and if they are not, they will not be allowed.

Q. How are you going to know? You have no evidence of what that $125,000 covers? A. Well, we will find out.

Q. But how can you? A. We can find out by inquiring.

Q. Tell us how. We would like to know how you are going to discover? A. I think you would find out if you had to.

By Chairman Thompson:

Q. Do you know how you can find out? A. I think we could find out.

Q. Don't you think — A. If they make subsequent claims that might include that $125,000 in it again —

Q. Any of this $1,532,000? A. I don't believe they could.

By Mr. Shuster:

Q. How will you know? They gave you no items. All they gave you is an aggregate sum? A. I believe I have an indistinct recollection that a good many of those items are on the records in our general accountant's office, in Dr. Weber's office. I am not sure of it, though I can find out.

Q. You have not in your office? A. No, we haven't them in our office, but if they are a matter of record they can be found, Mr. Shuster.

Q. But you don't know whether they are a matter of record? A. Well, I have — I presume they are. I can only presume they are. I don't see how a man can make up a statement of that kind without he makes it from some record, probably.

Q. Your own testimony is this $125,000 was practically the result of a barter or trade? A. Yes, sir.

Q. Or understanding, and no evidence to support it, excepting their statement they had spent $1,532,000? A. Yes, and from our general knowledge of what was going on, I have no doubt they did.

Q. But how do you know it was properly chargeable under the contracts to this determination? A. Well, it was not — that $125,000 — you mean $1,500,000?

Q. Or any part of it. How do you know the $125,000 was properly chargeable? A. Well, we believed —

Q. Well, what you know, not what you believe. A. Well, I don't know.

Q. And you had no evidence before you at all? A. No; if you put it that way, no.

Q. It was simply a compromise? A. Yes.

Q. A barter? A. Yes, what I considered a good settlement.

Q. Is that the kind — well, is your position that of negotiator between the City and the lessee in this matter? A. Well, I think it is in a way, yes, sir. I was satisfied that that was a fair amount for them to charge as against a parallel charge of the Commission covering the same period of something over a million dollars, and knowing they were working on the same general lines, with their counsel force, with their administration force —

By Mr. Moss:

Q. Did the City get that million dollars you are talking about? A. The City?

Q. Yes? A. The City expended.

Q. Expended, yes? A. Expended that million and it was charged up in that determination as against the dual subway system.

Q. Was there any item in that $1,532,000 that was legally chargeable against the City under that contract? A. I cannot say there was.

Q. Then how did you dare allow a single dollar of it? A. Well, because I thought it was a good settlement.

Q. Why should you settle a million dollars for $125,000 — A. I presume —

Q. Listen to me. — when you cannot say a single dollar of the claim of a million dollars and a half was legally chargeable against the City? A. Well, because I thought they could collect the money if they went into court arbitration about it, and it was a good settlement, by advice of counsel.

Q. Did your counsel advise that? A. The counsel, as I understood, agreed that was a fair settlement.

Q. George S. Coleman? A. Mr. Coleman.

Q. Now, once more — you have forgotten your previous answer. Is there a dollar of that $1,532,000 that was legally chargeable against the City? A. Well, I presume there was. I cannot say positively.

Q. Did you come to the conclusion there was? A. I was under the impression there was — probably a good deal more than that. Possibly more.

Q. Stick to the items of the $1,532,000 what items of that — A. I cannot specify any items.

Q. Well, what item can you state generally of that $1,532,000 was legally chargeable against the City of New York? A. I cannot specifically, any of them.

Q. Did you come to the conclusion at that time that there was one item legally chargeable against the City in that claim? A. Not in detail, no.

Q. How did you dare allow $125,000 of the City's money in a compromise of a claim where you cannot find a single item chargeable? A. I thought I was doing what was proper at the time.

Q. Who asked you to do it? A. Nobody. That was presented to me. I accepted it as personal.

Q. Who told you it was proper? A. Nobody told me it was proper.

Q. Did Mr. Coleman tell you it was proper? A. He did not, personally, no.

Q. You only inferred he thought so? A. Yes.

Q. Didn't you ask him if it was proper? A. No.

Q. Why? A. I didn't think it was necessary.

Q. Isn't he there for that purpose? A. Well, when he simply informs me of a thing, through another party, I am willing to accept the statement.

Q. What other party does he inform you through? A. Mr. Turner.

Q. He is not a lawyer either? A. No.

Q. You have again and again disclaimed the idea that you are a lawyer or a court. You say you don't know about such things. What do you have Mr. Coleman there for? A. Legal adviser.

Q. Why didn't you advise with him on this proposition? A. Because I understood that this was — a meeting had been held and the matter had been thoroughly discussed, and after being discussed Mr. Coleman and Mr. Turner thought that was a proper allowance.

Q. Who told you such a meeting had been held? A. Mr. Turner.

Q. Who was present at the meeting? A. Mr. Coleman, Mr. Turner, Mr. Rorgers, and I don't know whether anyone else was present or not.

Q. Did you just sort of take a hint that thing was to be allowed, and let it go through? A. I did not take a hint at all. I was satisfied from the explanation made that that would be a fair settlement of that.

Q. Where was that meeting held? A. I understand in Mr. Coleman's office.

Q. Who told you? A. Well, I don't know that anybody told me. Mr. Turner had attended this meeting, and I presume that was in Mr. Coleman's office.

Q. Why didn't you attend it? A. Because it was in all these conferences where a matter of accounting is concerned, and I wished Mr. Turner to represent me, because he has to follow up the details of anything that is taken up in these conferences.

Q. Why didn't you go yourself with Mr. Turner? A. Well, I can't tell the reason. I don't know really. I couldn't say whether I was at the office that day. I don't know.

Q. Did you try to be there? A. I don't know. I don't know — I cannot answer anything about the details of that conference.

Q. Here was a conference which was to determine whether you as the one authority — you personally as the one authority — you personally as the one authority, should put your check upon these items — of those millions of dollars. Can you say any reason why you were not there? A. I don't recall whether I was even in the City at that time. I may not have been in the City. I don't recall.

Q. Can't you get some kind of recollection about this very important matter? A. Not more than I have told you.

Assemblyman Feinberg.— Not even about records?

Mr. Craven.— In what respect?

Assemblyman Feinberg.— You have some records?

Mr. Craven.— They are there.

Chairman Thompson.— Did you keep a diary?

Mr. Craven.— You mean, to recall whether I was in the City.

Assemblyman Feinberg.— Whether you referred to any documents at all.

Mr. Craven.— All these documents before me.

By Mr. Moss:

Q. Was the Interborough represented at that conference? A. Mr. Rodgers.

Q. How do you know that? A. Mr. Turner informed me he was there.

Q. Did you know Mr. Rodgers himself was getting a bonus? A. Yes. We passed on Mr. Rodgers' allowance. I don't call it a bonus. I don't know whether you call it a bonus or not. We passed on his allowance.

Q. Now, you did pass on Mr. Rodgers' allowance yourself? A. And Mr. Gaynor's allowance.

Q. Yes. You are not certain whether you passed on Mr. Shonts's allowance, but you know you passed on Mr. Rodgers'? A. As far as my information was concerned, no allowance was claimed for Mr. Shonts — never had been.

Q. Was Mr. Rodgers a paid officer of the Interborough? A. He was.

Q. Under a regular salary? A. I don't know whether he was under regular salary or not.

Q. You never inquired? A. I never inquired.

Q. Do you know whether Mr. Rodgers had presented any bill for this extra $50,000? A. I don't know whether he did or not.

Q. What is your best information? A. I have no information.

Q. Don't you know he did not? A. No.

Q. Did you pass that, too? A. I passed that claim on the statement that — the counsel — there is some memorandum, I think, that shows what amount the Interborough claimed should be paid to Mr. Rodgers and to Mr. Gaynor for their services.

Q. Yes, yes; well, now, as to Mr. Rodgers, you knew when you were allowing the payment to Mr. Rodgers it was affecting the City of New York financially, didn't you? A. Certainly, any payment we made on those determinations.

Q. Don't you know Mr. Rodgers did not render any bill for that? A. I don't know.

Q. Don't you know he made no claim for it? A. I don't know.

Q. Don't you know it was a pure gratuity to him? A. If what you state is a fact, it probably was.

Q. How is it you did not know anything about it when you checked it? A. I think I am wrong about that. I believe I recollect — I believe that both Mr. Rodgers' and Mr. Gaynor's — those allowances were made for their extra services.

Q. Yes, but they had not asked for the allowance, had they? A. I don't know whether they had or not.

Q. They had no legal claim for those allowances, had they? A. Well, I think it is a very common occurrence to pay a man —

Q. A good policy for an honorably dealing company to deal fairly with its employees? A. That is proper.

Q. But what right had you to bind the City of New York to the gratuities given by the Interborough Company to its faithful employees? A. I think it is a proper charge as against the prior determination for work done prior to the signing of the contract.

Q. They had done the work, regardless of the $50,000 — they had done the work regardless of the bonus, hadn't they? A. That I don't know.

Q. Don't you know they had? A. No.

Q. Don't you know the bonus did not make them do the work; it was simply an extra reward? A. They were entitled to it.

Q. What right had you to make the City of New York an eleemosynary institution? A. I don't see where the City of New York in a business proposition is any different from any other people.

Q. Well, I know this very well, if you will excuse the personal reference. Whenever I did any extra work in the District Attorney's office, if I sat up all night for a week, and fought all day for a week, I got just my regular salary, and if somebody had paid me any more somebody would have gone to jail. A. I worked nights and days too.

Q. Well, you got your salary; you got no bonus? A. No.

Q. What right had you to be giving away the money of the City of New York as bonuses to the Interborough for its faithful of-

ficers? A. The Interborough had advised those were proper charges.

Q. Didn't you know when that $125,000 was allowed, that it was to represent, or that it was for the purpose of covering the payments that had been made to Mr. Shonts? A. I did not, positively no.

Q. Or somebody like Mr. Shonts? A. No; positively no.

Q. That somebody was geeting a bonus? A. Positively no.

Q. What did you know about it? A. Just what I have said.

Q. And you just gave away money, without knowing what it was for? A. I considered that a fair —

Chairman Thompson.— We don't care what you considered.

Mr. Craven.— Then I cannot answer your question.

Chairman Thompson.— Did you know what it was for?

Mr. Craven.— No.

Chairman Thompson.— Well, that answers the question.

By Mr. Moss:

Q. Does any employee of your department get $50,000 a year, bonus or otherwise? A. Not that I know of.

Q. They work pretty hard? A. Yes.

Q. You put in extra work? A. Yes.

Q. Mr. Turner certainly did? A. Yes.

Q. You didn't dare attempt to give a man in your department indirectly a bonus of $50,000 or $10,000? A. The City cannot do those things.

Q. But when it is tied into a contract, through you, it can and does? A. When I am advised by counsel —

Chairman Thompson.— Just answer the question.

Mr. Craven.— I can only —

By Mr. Moss:

Q. The City did do it through you, didn't they? The City did it through you in connection with Mr. Rodgers? A. They did it through me. I am responsible for it.

Q. And could not do it for their own employees, could they? A. I don't think they could.

Q. You say you are responsible for it? A. I am responsible for it.

Q. You are the man through whom it went? A. I am responsible. I assume the responsibility, as far as the official action is concerned.

Q. Didn't Mr. Coleman work as hard on the one side as Mr. Rodgers did on the other? A. I presume so.

Q. And got no bonus at all? A. I have not allowed him any.

Q. Don't you think you have been pretty liberal with the City's money? A. I don't.

By Chairman Thompson:

Q. You knew, when you allowed these items, this $125,000 item, you didn't know what it was for? A. I knew —

Q. Answer the question. A. I knew it was a part of a general claim for $1,500,000.

Q. You did not know anything about the items that made up this $125,000, or what it was for? A. No, specifically, no.

Q. But you did know when you allowed the auditor $10,000 and the attorney $50,000, you knew what it was for? A. Yes. I allowed it.

Q. And you allowed it, at the time, knowing what it was for, and knowing it was in addition to the regular salary of both these men? A. I did.

Q. Knowing it was given after the service was rendered for which they had been paid a regular salary; is that correct? A. No. I don't understand they had been paid a salary for that work at all.

Q. You knew they had been drawing a regular salary from the company that employed them? A. I did.

Q. And you knew that Mr. Rodgers' regular salary amounted to more than $25,000 a year? A. I don't remember what it was.

Q. You knew it was more than your salary? A. I do not.

Q. Never knew? A. Well, I may have known.

Q. Then you never inquired? A. Certainly I did not inquire.

Q. You never inquired as to what salaries these men had, nor

what contracts they had with the railroad, nor what service they had to perform for their regular salary? A. No, I did not.

Q. And without that inquiry, you went on and allowed both these bonuses, knowing that you were doing it, and charging it to the city? A. I allowed them, yes.

Q. Just answer the question. A. I can only qualify my answer.

Q. Can't you answer? You say you did not know what these men were drawing from the railroad? A. I did not.

Q. And you did not know what their contracts for services provided for them to do for the railroad? A. I did not.

Q. And made no inquiry? A. I did not.

Q. You knew when you allowed the item of $50,000 to Mr. Rodgers, and $10,000 to the auditor, that they were in addition to their regular salaries? A. It was.

Q. You knew that? A. I knew that.

Q. And knowing that, you allowed them against the city, knowing it was to be charged against the city? A. I did.

Chairman Thompson.— That is all. Any more questions?

Mr. Craven.— Now, I wish to say in respect to that —

Mr. Moss.— Miss Stenographer, will you mark that page in evidence —

Chairman Thompson.— I want to say this to you, as Chairman of this Committee: I am going to prefer charges against you as Chief Engineer of the Public Service Commission, for allowing these items. If you have anything to say about it — I shan't do it before to-morrow — you can come in this afternoon.

Mr. Harkness.— As a friend of Mr. Craven's I advise him not to give any more material to this Committee, as it is simply to be used against him — for what purpose I cannot say.

Chairman Thompson.— You advise Mr. Craven —

Mr. Moss.— As a friend — in what relation?

Chairman Thompson.— You are assistant counsel of the Public Service Commission?

Mr. Harkness.— I simply say to Mr. Craven, as a friend of his, that anything he gives to this Committee — what its outrageous.

Chairman Thompson.— You do this as counsel for the Commission?

Mr. Moss.— As a friend —

Mr. Harkness.— As a friend of Mr. Craven.

Chairman Thompson.— In your capacity as counsel of the Public Service Commission?

Mr. Harkness.— No. I am not called. I do this as a friend of Alfred Craven.

Chairman Thompson.— You publicly, before this Committee, advise Mr. Craven not to give any more information concerning the engineering department of the Public Service Commisson of the First District?

Mr. Harkness.— You have distorted what I said.

Chairman Thompson.— I will prefer charges against you.

Mr. Harkness.— You can do it, and I will be glad to meet them.

Chairman Thompson.— If you make that kind of advice, I will be glad to do it.

Mr. Moss.— Had Mr. Harkness anything to do with this matter I am inquiring about?

Mr. Harkness.— A great deal.

Mr. Moss.— Then I would advise Mr. Harkness, as a friend who really — I have a personal regard for you — not to say any more.

Mr. Harkness.— May I say just one word.

Mr. Moss.— Please take my advice and don't say anything more.

Mr. Harkness.— The statement I made has been distorted.

Mr. Craven.— I wish to say to Mr. Thompson that I have no intention of going to him to give any information as to my testimony to-day. I don't think it is necessary or advisable, on account of anything Mr. Harkness has said.

Chairman Thompson.— You don't have to make any explanation before this Committee for your action.

Mr. Craven.— I don't wish to.

Chairman Thompson.— I don't ask you to, but I give you an opportunity to, but if it gets to a question, simply because this Committee don't feel that your action has been proper in regard to the allowance of these bonuses, that don't follow that you are justified in refusing information concerning the engineering department.

Mr. Craven.— I don't understand — I will give you any information you want, Mr. Thompson, at any time, be glad to do so.

Chairman Thompson.— If Mr. Harkness takes that stand, we will find out about it.

Mr. Shuster.— Mr. Chairman, I would offer in evidence the memorandum for Mr. Coleman, dated July 31, 1913, contained in the Chief Engineer's file of records. This memorandum is signed R. R. Rodgers; and written on the last page of the memorandum is a letter addressed to Mr. Turner, signed "G. S. C.," dated July 31, 1913. Under the initial signature in pencil appears "G. S. Coleman." Also memorandum dated July 29, 1913, Interborough Rapid Transit Company, in which is the memorandum produced by the witness as the evidence and basis of his determination of the costs of the Interborough Company contained in the prior determination of October 14th, 1913.

(The two papers referred to were marked as one exhibit, Exhibit No. 1 of March 2, 1916, V. E. Valva.)

By Mr. Shuster:

Q. Mr. Craven, under the contract with the Interborough Com-

pany, you were required to make quarterly determinations? A. We are.

Q. Have you made such quarterly determination since the execution of the contract? A. I have made one such quarterly determination.

Q. One? A. Yes.

Q. And why not others? A. Because the one that I made is still in the hands of the Commission.

Q. Why should that interfere with your making the subsequent quarterly determinations? A. I cannot make a determination until the former one has been settled in some way.

Q. You are required to make it quarterly? A. We cannot always do it.

Chairman Thompson.— Well, now, we will suspend then until half-past two, in this room, next door here. Just a minute before we suspend.

Mr. Shuster.— We would like these witnesses to be requested to return.

Mr. Moss.— Request the witnesses to return.

Chairman Thompson.— I have a letter from Mr.— witnesses are all directed to appear here at half-past two. I have a letter from Mr. R. A. C. Smith, the Dock Commissioner, with reference to the subject of ferries which we had before us sometime ago. He sends me a copy of the "Report on the Operation of Municipal Ferries by the City of New York from 1905 to 1915;" also, minutes of a hearing held by Honorable R. A. C. Smith, Commissioner of Docks, in the Council Chamber, City Hall, on February 24, 1916, on H. R. Bill 4781, to amend Section 4464 of the Revised Statutes of the United States. I ask to have the letter extended on the record and the reports marked as exhibits. (Minutes of hearing referred to, marked Exhibit No. 2, March 2, 1916; V. E. Valva; Report from 1905 to 1915, referred to, marked Exhibit 3, March 2, 1916, V. E. Valva.) Letter referred to is as follows:

"The City of New York.
"Department of Docks and Ferries,
"Office of The Commissioner.

"R. A. C. Smith, Commissioner.
"Pier A, North River, March 1, 1916.

"Hon. George F. Thompson,
"c/o New York County Lawyers' Association,
"165 Broadway, Manhattan:

"My dear Senator Thompson.— In the early part of last year you were very much interested in ferry matters. No doubt you had some idea in your mind with reference to control of the municipal and private ferries under the jurisdiction of this department. I am thinking, however, that you and your Committee have given up further consideration of the subject, which I hope is correct.

"There is now pending in Congress legislation restricting the carrying capacity of all ferryboats. This legislation has been introduced, we are advised, under the sponsorship of Secretary Redfield of the Department of Commerce. The bill has been favorably reported on by the Senate Committee on Commerce and is now before the Committee of Merchant Marine and Fisheries of the House.

"As you will note by the minute which I enclose herewith, we are recommending the bill be amended to exclude ferryboats and that the whole matter be referred back to the Department of Commerce with a view to thoroughly considering the whole subject and recommending legislation that will provide properly for the safety and convenience of the traveling public.

"Very truly yours,
"(Sgd.) R. A. C. SMITH,
"Commissioner of Docks.

"Enc.

"P. S. I mailed you a copy of report reviewing ferry operations from 1905 to 1915, to Albany, and I presume you have received it. However, I am sending you a second copy herewith."

Chairman Thompson.— We will suspend until 2.30.

(Whereupon at 1.07 P. M. an adjournment was taken until 2.30.)

MARCH 2, 1915—3:07 P. M.

AFTERNOON SESSION.

Chairman Thompson.— I have an arrangement on behalf of the Committee for the holding of the sessions in the rooms of the New York County Lawyers' Association only until March 7th, or this week, rather. The attendance at the sessions here has been so large that it became a source of intereference with the ordinary use as to which these rooms are put. For that reason the officers of the Association feel that they would not like to continue the arrangement and they have made arrangements for the next week for the holding of some references and trials; it seems they use these rooms for that purpose, so that we will have to make arrangements for the hearings after this week at some other place. I would have taken this up yesterday, but I felt that until the resolution extending the time of the Committee was actually passed by both houses, perhaps we ought not to do that. and I find that the Senate Resolution did not arrive yesterday in time to be amended, and was not acted upon in the Assembly. I telephoned the Speaker this morning, and he assured me that the resolution extending the time to July 1st would pass the Assembly, and that there — he said I might publicly state there would be no doubt the Committee's time would be extended to July 1st. This afternoon I have been informed by Mr. Feinberg, the Assemblyman on our Committee whose brother is the Coroner, that the Coroner's rooms in the Municipal Building, would be available. I have taken it up with the Coroner, the President of the Board of Coroners, and he tells me those rooms could be used by us very nicely. and advises that I make formal application to the Board of Sinking Fund Commissioners and the Borough President, and the Mayor, which I will finally do if it reaches the approbation of the Committee

this afternoon. I have sent for paper on which to write those letters, and we will see if we can make arrangements for such meetings as will be held after this week, to be held up there. I rather want to say in this connection that I feel — the Committee feels very grateful to the New York County Lawyers' Association for the many courtesies they have shown and extended to us, and we are in entire sympathy with them, in the fact that they could not possibly allow the rooms to be used longer, because it does create such an influx of people and these are public hearings, and we must continue them to be public, and every person who desires to be here, and can have room, will be allowed before the hearings as long as they continue. And we desire to express our thanks to the New York County Lawyers' Association for the many courtesies and to the officers of this building. It has been a convenience, too, in relation to the books and papers of the Interborough Rapid Transit Company, and notwithstanding the many suggestions of Mr. Quackenbush, representing the Interborough, that he would make the books and papers and documents available whenever we asked for them, I wish to say on behalf of the Committee that he has done that, and the Interborough always has presented their books, papers and documents, as we have asked for them. We will have to continue to ask them, and we are sorry to ask them to be inconvenienced by walking up town. With that statement I will dispose of that matter. We will now proceed with the regular business.

ALFRED CRAVEN, recalled as a witness, having been previously sworn, testified as follows:

By Mr. Shuster:

Mr. Craven, when did you, if at all, establish any systematic method of making your investigations and checking your items, with the use of your subordinates in your department? A. I cannot remember the date. It was through and following the signing of the contracts, we got together with the secretary and with the auditors of the two companies and established a system of accounting, of keeping these records.

Q. That was shortly after the contract was signed, of March

19th? A. Shortly after. I am not sure, though. I can give you the date. Possibly there is a record of it. I don't know.

Q. You do recollect having done something? A. I do recollect having gotten together and establishing the uniform system of accounting.

Q. And to whom did you issue the instructions to prepare that system and promulgate it through the force? A. There were no written instructions that I can recall. It was simply an understanding that such a system of accounting should be established, and Mr. Turner was selected to represent the engineering department and I think he consulted with Dr. Weber and others.

Q. And it is your recollection that Mr. Turner was so instructed prior — after March 19, 1913? A. I think so. I cannot state positively, but there may be a record of it.

Q. I read into the record from the files that you have got here, Mr. Craven, the following. This is memorandum for Mr. Wilcock. What is Mr. Wilcock? A. Mr. Wilcock is in the accounting department with Mr. Kohler.

Q. And is a subordinate under Mr. Turner? A. Mr. Kohler and Mr. Turner — under Mr. Turner.

Q. I will continue to read: "October 22, 1913." That was two days after you had made your prior determination, was it not? A. I believe so.

Q. "Mr. Turner." Evidently this is a memorandum by Mr. Turner.

> "In the future, in order to reduce the chance of errors in all computations to the minimum, I wish you would establish a systematic method of making, checking and filing the results of such computations. It is suggested that all computations whatever having to do with Chief Engineer's determinations, should be made on our regular form E-1, the heading on each sheet being properly filled in with the date, the name of the computer and the checker, etc. The checking of such computations should not be perfunctory, but should be careful and reliable. I wish computations made in some way so the responsibility for any errors that may result can be placed. All of the computations having to do with the deter-

minations which are prepared, should be initialed by the original parties dealing with them and checked by another party, who will also initial them. Also, we might just as well begin now to systematize the method of filing away these papers, so that the basis for the determinations can be quickly and conveniently referred to in case of inquiries from the company interest.

"Signed blank,
"Deputy Engineer of Subway Construction."

Q. Mr. Turner is the Deputy Engineer? A. Yes, sir.

Q. Now, are we to understand that Mr. Turner did not conform with your instructions in getting up, making a recommendation of this kind to Mr. Wilcock, until after your prior determination? A. Not at all. That is some special matter that has been probably developed during our accounting system, and that was some instructions in order to probably perfect and make clearer the records and make them available from the files.

Q. Well, is there anything in your records here to show there was any earlier direction to establish such a system, or any system at all? A. I don't know whether there is or not. I will have to go over the records and find out.

Q. Did you note that this says,

"In the future, in order to reduce the chance of errors, in all computations to the minimum, I wish you would establish a systematic method of making, checking and filing the results of such computations. It is suggested that all computations whatever having to do with the Chief Engineer's determinations should be made on our regular form E-1."

A. Yes.

Q. Doesn't that refer to all determinations? A. It refers to all determinations, I presume, yes, sir.

Q. And can you give any reason why such a system was not in vogue at the time you made your prior determination? A. Simply because that is in order to perfect the general system that has already been established.

Q. What was your system at the time you made your prior de-

termination? A. That system, I cannot explain it to you in details.

Q. All right.

By Mr. Moss:

Q. Didn't you shut the door after the horse was stolen? A. No, sir, not at all. I don't understand what you mean.

Q. The horse of $125,000 and of $50,000 and $10,000? A. Mr. Moss, I want to say right here, as far as that $125,000 is concerned, and Mr. Shonts, I never heard of Mr. Shonts in reference to —

Q. You heard of somebody. Somebody got $125,000. It doesnt make any difference whether it was Mr. Shonts or not. A. Your inference was that was made to cover that up somewhere.

Q. No, understand me. You said this morning that you put your O. K. upon these items? A. I did.

Q. Which was the only way of getting them passed? A. Yes, sir.

Q. Something that the Commissioners themselves could not do. You put your O. K. on, not knowing what it was about not knowing what it was for? A. No.

Q. Now, here is something Mr. Shuster has called your attention to, emanating from you, going to the Commissioners, asking them in the future — A. Doesn't go to the Commissioners.

Q. Whoever it goes to? A. Simply one of Mr. Turner's assistants, in order to get —

Mr. Shuster.— It was one of your subordinates.

Mr. Craven.— Yes.

By Mr. Moss:

Q. Asking for details so that you might do your work better in the future? A. That is very natural, when you undertake to do good work in our accounting system. If you find reason to better it, you better it.

Q. What was there two days after you certified — A. I don't know.

Q. Listen. What was there two days after you certified those items, inducing you to ask for a better system of getting your de-

tails, which would affect your determination as Chief Engineer? A. I cannot say.

Q. Can you give any reason why that was done two days after you had done these things? A. I can't. That was an instruction from Mr. Turner, who had charge of that, to his subordinates.

Q. Did you know Mr. Turner was issuing that? A. Always put on my desk.

Q. Did you talk with him? A. No.

Q. Did you talk with him about it? Did you ask him what was the necessity of a thing like that? A. I assume those necessities arise as they go along.

Chairman Thompson.— Never mind your assumption.

Mr. Craven.— I don't know.

My Mr. Moss:

Q. Will you tell me what is the reason that your first quarterly determination has not been accepted by the Commissioners? A. I cannot tell you.

Q. Have you asked them? A. No, I have asked them to forward it. I think it ought to be —

Q. Have you asked them to reason why they have not? A. You mean the first quarterly determination?

Q. The first quarterly determination? A. I have not.

Q. Why didn't you ask them? A. Because I did not consider it my business to ask them.

Q. Interference with your work? A. Not at all.

Q. Doesn't it interfeer with the work which devolved upon you alone, to pass the items that are claimed by the Interborough? A. I cannot say it interferes with it, no.

Q. Don't you think these quarterly determinations could be made from quarter to quarter? A. Would be done, if they could.

Q. Why don't you ask them why they hold it up? A. I am under the impression there is letters on record, where I have asked for and urged them of the necessity for those examinations.

Q. What don't you ask them why they don't act? A. Well, I don't know why I should specifically ask them questions before they —

Q. Have they told you they have no conscience in your recommendations? A. They have not.

Q. Don't want to be bound by your errors or mistakes? A. They have not.

Q. Has it occurred to you that might be the fact, in your mind? A. Never for a minute.

Q. Why don't you ask them? A. I think there is a letter on record, urging them.

Q. How many quarterly determinations are now held up? A. Well, the first quarterly determination is held up; the second quarterly determination and third and the fourth — there is — I think there is five have been proof prints made of them.

Q. Well, how many are held up? A. Oh, there must be nine due by this time. I cannot recall exactly.

Q. Well, don't you think that is a serious interference with the work that should be done, nine quarterly determinations held up? A. I don't think so.

Q. Don't you think it gives opportunity for dealing or for log-rolling, or at least, for the suspicion of dealing? A. I am not suspicious of anybody, of dealing and log-rolling.

Q. Isn't it your business to be suspicious? A. No.

Q. As the one who is to pass on these items? A. Not to be suspicious of anybody.

Q. You have not been suspicious of anybody? A. I have not been suspicious of anybody.

Q. From the beginning to the end? A. No.

Q. Well, then I will ask this question. A. I would be very unhappy if I was suspicious of people.

Q. Many people are unhappy because they have to be suspicious.

Chairman Thompson.— Lots of people are willing to be, for $20,000 a year.

Mr. Craven.— I earn my $20,000 a year.

By Mr. Moss:

Q. Well, now you allowed $50,000 to Mr. Rogers, and ten or fifteen thousand dollars to Mr. Gaynor, and $125,000 to somebody whose name you didn't know at the time. Were any of these ser-

vices for which those allowances were made, rendered after the contracts were signed? A. No, sir. After the contracts were signed?

Q. Yes. A. No.

By Mr. Shuster:

Q. How do you know that? A. Because it is a prior determination, and we look into it to see that they were — well, as far as the legal end of it is concerned, Mr. Coleman handles that and advised me in reference to the legal part of that determination.

Q. All you know about it is what somebody told you, Mr. Coleman and Mr. Turner, and you made no independent investigation whatever? A. I didn't think it necessary.

A. And therefore you didn't do it? A. Therefore I didn't do it.

Q. But you think you fulfilled your duty? A. I think I fulfilled my duty, when I acted on the advice of counsel, where the lawyer's fee and disbursements were concerned.

Q. What do you suppose was the object of making you the arbiter of this matter? A. Well, I wish to heaven — when the dual contracts were signed, it seemed to be the general impression that everything should be put up against the chief engineer.

Q. Do you think these — A. That was before I was made the chief engineer; I have to accept the situation.

Q. Do you consider these determinations of any consequence? A. Of great consequence; of utmost importance.

Q. And do you think the time in which these determinations are made is important? A. I don't think they attach much importance to that.

Q. Wherein are they important, if not in point of time? A. They are important to get at the final cost of the work and distribution —

Q. You are aware that if this job runs over the estimated cost, that the city pays whatever that excess is? A. I certainly am.

Q. And isn't that matter of a prompt determination of these costs reported to the city so that they will know that the company has actually contributed its agreed share? A. Well, we have that under consideration all the time. We are keeping tab on that.

Q. What have you final and binding against the city and the company as to contractors here? A. The contract is binding.

Q. But what figures bind the parties without any determinations? A. Why, we have our figures every month, every quarter.

Q. Are they final? A. Not necessarily.

Q. Are they at all final until you have determined them so? A. They are not.

Q. No, so that you don't know anything about — A. They may be appealed from.

Q. To-day you don't know anything about the finality of any figures, except these in the prior determinations? A. Why, supposed to know all the determinations, and I do, generally; in a general way, I know about all the determinations. As I say, it is impossible for me to go into the details.

Q. Is there a single determination, or has there been a single determination made by you that has become final, with the exception of the prior determination? A. On the Interborough, no.

Q. On any of the others? A. Oh, yes. On the B. R. T. work there have been — I think seven have been made final.

Q. Well, can you tell us why the determinations can be accomplished promptly with the B. R. T. work and not with the Interborough? A. I can only say that I have made my determination and sent it to the Commission, and it was — it is appealed from by the Interborough Company; that is the first quarterly determination.

Q. What about the second quarterly determination? A. The second quarterly determination cannot go in until the other one is settled.

Q. What is that? A. Because it can't.

Q. That don't answer the question. What is the reason? A. Because it would involve going back and changing possibly a whole lot of figures that had already gone in the first determination.

Q. That is your determination of the contract provision with regard to your determination? A. If they appeal from the determination — if they appeal from the determination and it goes into arbitration.

Q. They must appeal within thirty days? A. They must appeal within thirty days.

Q. And you must reconsider within thirty days? A. I must

reconsider within thirty days, and if the appeal is made, and the figures are changed, they would affect the next determination.

Q. Now, what have you been doing with regard to these determinations, extending the time. A. The first quarterly determination, I think, was extended once.

Q. By what power or authority? A. By the appeal of the Interborough Company against the determination.

Q. But that appeal must be disposed of within thirty days? A. Well, it was not disposed. The time was extended.

Q. Why not? Who has power to extend that time? A. The Commission.

Q. Under the contract? A. Under the contract. They have — they entered into a stipulation with the —

Q. Will you find in the contract for me the place that gives the Commission the power to stipulate away your powers? A. That is probobly a legal matter. I have to let the legal department — the contract —

Q. Has the counsel of the Commission or anyone advised you that your powers as the determining officer here — A. Oh, Mr.—

Q. — can be extended by stipulation of the parties themselves? A. I could have overridden the Commission and everybody else, if I had pleased.

Q. Isn't that what you are there for? A. I could have arbitrarily made those determinations, but I am an employee of the Commission, and I don't think it is my duty or that it is proper, or right, for me to override the Commission, when they have matters in their hands.

Q. If you are right, is there any reason why you should not? A. I don't know, but I think it would be an improper proceeding.

By Mr. Moss:

Q. Did any of the Commissioners know you were approving these things to Mr. Rogers, Mr. Gaynor, and the other man who turns out to be Mr. Shonts? A. Well —

Q. Did you talk with any Commissioner? A. No, I did not.

Q. You said you were only their subordinate, and hesitated to use the extreme power the law gives you, because it was not fitting a mere employee of the Commission should have wider powers than they? That may be so. But if that is the case, and that is your

feeling, did you talk with any Commissioner regarding the allowance of those bonuses or gifts? A. Well, those gifts or bonuses —

Q. Did you talk with any Commissioner about them before you allowed them? A. I don't recall having talked to any Commissioner about them.

Q. Don't say that you don't recall. Please recall. Did you or didn't you? A. It is a fact, I cannot recall.

Q. Didn't you or did you? A. I don't know whether I did or not.

Q. Mr. Craven, you have been under examination for several hours, and you have been thinking about this thing, and you realize that the burden of it, whatever it may be, is on your shoulders? A. I am willing to take the burden.

Q. You realize that. If you talked with any Commissioner about it, don't you think that it would be up to your mind. A. Not necessarily so.

Q. I don't care about the "necessarilty." A. I don't know whether it would or not. How can I possibly cull one item out of ten hundred thousand?

Q. You did not have ten hundred thousand items like that? You have not been ten hundred thousand times giving away fifty thousand at a clip, have you? A. No.

Q. Now, with every reason why you should have your mind upon this question, upon the question of the responsiblity that seems to be yours, now, I ask you, didn't you talk with any Commissioner about the allowance of these bonuses or gifts? A. I cannot recall ever having talked with them. If any of them said I did, I would not deny it.

Q. Did any of them speak to you? A. I cannot recall.

Q. Are you in the habit of talking with Commissioners about delicate matters like this, where the responsibility was important? A. It never struck me as being a delicate matter.

Q. Speaking to Rodgers, over how long a period prior to the executing of the contract, had he been rendering those services for which he gets $50,000 in addition to his salary? A. I think it was three or four years.

Q. Three or four years before the contract was signed? A. Yes.

Q. And you, under this contract, allowed the benevolencies of the company to affect to the City of New York over that period, prior to the contract, of three or four years? A. That was understood in the contract.

Q. What is understood, and what you did — A. Provided in the contract.

Q. Yes, yes, yes, but, now, can't you remember, in view of the importance of this matter, whether you talked with any member of the Commission? A. I cannot.

Q. Or with any officer of the Commission? A. I cannot.

Q. Did you talk with the secretary of the Commission? A. I don't recall having talked with him.

Q. Did you ever talk with him about whether you should or should not allow any item? A. No.

Q. The secretary? A. No.

Q. Did you ever talk with any Commissioner as to whether or not you should allow any particular item? A. I do not talk with any Commissioner as to my determination until it is made.

By Chairman Thompson:

Q. Well, now, you either take the responsibility for these determinations, or else the Commission takes it — which? A. I am responsible.

Q. You are the one. Then why should you hesitate about going to them and questioning them about it? If you have the responsibility, and it is not the Commission's, why did you wait for the Commission? You have not explained it satisfactory to me. A. Then I can't. I tell you, I don't think it is my duty, that I am required to ride roughshod over the Commission.

Q. Why do you think this was put into the contract in this way? A. I cannot say.

Q. Were you consulted about it when it went in there? A. No.

Q. Did you know it was in there before the contract was signed? A. Yes.

Q. Did you protest about it? A. I did not.

Q. Did you talk to anybody about it? A. Well, I cannot recall about talking with anybody.

Q. Did you want it in there that way? A. It was two or three years before the contract was signed.

Q. You were there, the engineer of the Commission? A. No, I was not, up to that time.

Q. When were you made engineer? A. I think in 1911.

Q. You were there two years before the contract was signed? A. I went through that contract; I went through those contracts.

Q. There was not any contract at all before July, 1911? A. I understood the general terms of those contracts, and was in conference with the different — not with the commissioners.

Q. No, the responsibility is either yours or the Commissions? A. It is up to me.

Q. Then you are not going to evade the responsibility any longer by putting it up to the Commission? A. Well, I don't know that I can make my explanation more definite than I have.

Q. Somebody must be responsible. It is quite important? A. I have told you the determinations I will take the responsibility for.

Q. Very well. Don't you see, Mr. Craven, it is very important, if you make some sort of a rule by which nobody is responsible for a thing like this? A. I don't think any rule is necessary. There are the facts of the case. I have made that determination and sent it to the Commission.

Q. You cannot carry on an important public work like this, without all matters like this centering at some responsible point. A. As far as my responsibility is concerned, I am perfectly willing to assume it.

Q. Another thing. You said a little while ago — you said you had a letter on record. After you put a letter on record, and you get the record looking right, are you contended then? A. Not always.

Q. Are you ever? A. Sometimes.

Q. Is that the way you do business, just to get the record right and let it go? A. Oh, no.

Q. All right.

By Mr. Moss:

Q. Is the Interborough asking you to make your determinations on these quarterlies that have been held up? A. They have. They have written a letter, asking that, that the first quarterly determination be advanced.

Q. What about the others? Have they written any letters about the others? A. Not — there is no use in writing about the others until this is out of the way.

Q. That must be out of the way? A. That must be out of the way.

Q. How many times have they asked that that matter be closed up? A. The Interborough?

Q. Yes? A. I can only recall one letter. I don't know. There may have been others.

Q. Isn't it their right to have that closed up? A. They have a right to ask for it.

Q. Why do you refuse them that right? A. We don't refuse them the right. I explained to you that that matter is before the Commission.

Q. All right. A. And the Commission have, even of late, requested me not to make any more determinations.

By Mr. Shuster:

Q. What Commissioners did that? A. The present Commissioners.

Q. Name them? A. I don't know who was present at the meeting, but I got a request from the Commission, I think signed by the Chairman, or by the Secretary, requesting me for the present not to make any further determinations.

Q. Is that in writing? A. That is in writing.

Q. Is there any reason stated in that letter? A. I don't think so.

Q. Is it in this file? A. I don't know whether it is in the file. Have you the rest of this file, Mr. Turner?

Mr. Turner.— There is a second part I gave to Mr. Shuster. There are two parts, a thick part and a thin part.

(Witness looks through files.)

(Assemblyman Burr in the chair.)

Mr. Shuster.— I wonder if Mr. Turner could locate that for you?

Mr. Craven.—

"February 10th, 1916.

"Dear Sir: For your information and guidance, I desire to state that the Commission at its meeting on February 10th, 1916, adopted a motion directing that the Chief Engineer be requested not to give present consideration to any items of expenditure by the companies under Contracts Nos. 3 and 4, as items to go in to make up the cost of construction."

Mr. Shuster.— Who is that signed by?

Mr. Craven.— Signed by the Secretary.

By Mr. Moss:

Q. What is that date of that? A. Under the direction of the Board.

Q. Well, I find here, Mr. Craven, a memorandum by Mr. Turner, addressed to you, dated December 3, 1915.

"The question of advancing these determinations is still unsettled."

A. Yes.

Q. It goes back to December? A. Yes.

Q. "On September 9, after very considerable informal discussion among ourselves and with some of the Commissioners the second quarterly determination was sent to the secretary by me for suggestions prior to its formal issuance. In this determination the question of administration and legal expenses was redetermined on the theory suggested by Dr. Weber, Mr. Harkness and Mr. Whitney, that is the Company was not entitled to any such charges which exceeded the Interborough administration and legal expenses prior to the signing of the contracts. This determination was also a redetermination with request to the question of engineering and superintendence, therefore, if the determination issued, the only way that the matter could be taken exception to, either by the company or by the Commission, was by arbitration, etc.?" A. Yes, that is right.

Q. Well, then the question of the amounts allowed to lawyers is under consideration and under dispute, and was as far back as December. Isn't that so? A. Yes. That is the quarterly determination?

By Mr. Shuster:

Q. Yes? A. Yes, sir.

Q. And upon the ground that the present claims are larger than the claims prior to the contract? A. I presume that is what it means.

Q. What is the total amount involved in nine determinations of the Interborough costs that you have made? A. I have not the slightest idea.

Q. Can you approximate it? A. No, sir.

Q. (To Mr. Turner) Do you know?

Mr. Turner.— The total amount of expenditures up to date?

Mr. Shuster.— Interborough Company.

Mr. Turner.— Of the Interborough alone I cannot tell you. I only keep a general track of those. Approximately $200,000,000 to date.

Mr. Shuster.— Can you give us any approximation of what amount of that is credited to the Interborough contribution?

Mr. Turner.— Possibly I can.

By Mr. Shuster:

Q. Mr. Craven, who advised you that any of these legal expenses which you allowed to the Interborough Company in the prior determination were legal? A. Were what?

Q. Legal and proper items for you to include? A. In the prior determination?

Q. Yes. A. I took Mr. Coleman's statement that those were a proper allowance to be made.

Q. Now, your guidance in that respect is the contract itself? A. Yes, but in matters of that kind and matters of accounting, I have to depend on accountants, from account's department.

Q. But the contract controlled between the parties? A. Yes.

Q. I will read subdivision 5 of 17 of Article II, from Contract No. 3: "The actual and necessary net cost in money" — strike that out.

"The words, 'Cost of Construction' to mean" — and then we will skip one, two, three and four.

"(5) The actual and necessary net cost in money to the lessee for superintendence, insurance, damages, administration, engineering and legal expenses in and about construction, including in respect of the cost of construction for initial operation the expenses above referred to in this paragraph actually and necessarily incurred or payable by the lessee in and about construction prior to date of this contract and in addition the actual and necessary expense incurred or payable by the lessee in printing, engraving and certifying securities for construction." Now, the contract also defines what the word "Construction" means, when used in this contract. I now read from subdivision 14 of Article II, Contract No. 3: "The word 'Construction' to mean all work of constructing the railroad (together with the reconstruction of parts of existing railroads for the purpose of physically connecting the same with the railroad which the engineer shall certify to be necessary) including the doing of work, the providing of materials, the restoration and reconstruction of street surfaces, sewers, and all surface, subsurface and overhead and abutting structures interfered with during the building of the railroad and such reconstruction of exisiting railroads and all other work to be done or materials to be furnished of every nature whatsoever necessary to the completion of the railroad structure, all tracks (meaning thereby ties, concrete, rails, special work, spikes, joints, bolts, tie-plates and all other material or apparatus necessary to building the tracks, but not including electrical or signal materials or apparatus), together with all real estate and interests therein necessary to be acquired or extinguished for the purpose of construction and operating the railroad and for the purpose of such reconstruction of the existing roalroad."

Now, were any of these items for legal services and for admin-

istration attached to construction, as defined in the contract? A. I cannot say now. I would have to look the matter over. I know the matters pretty thoroughly.

By Mr. Moss:

Q. Now, I would like to ask you, before you get to the next line. Since you have been thinking about the matter, can you state now why those quarterly determinations are held up, the first? A. I cannot state why.

Q. You cannot state — A. What I mean to say is this: They are still in the hands of the Commission.

Q. What is the difficulty about them? A. I will have to refer you to the counsel.

Q. No, no. I ask — A. I cannot answer.

Q. Don't you know why they are held up? A. No, I don't.

Q. Do you know whether you or any member of your particular department has conferred with the Commissioners as to the cause of the holding up? A. I have no knowledge of anything of the kind, that I can recall.

Q. Are you remembering what I read to you here from your own file, which you hended me? A. Mr. Turner's memorandum, or is that Mr. Harkeness's?

Q. Mr. Turner. A. Possibly Mr. Turner may have been — those matters — there are so many of those things, I cannot answer these questions offhand.

Q. I am pointing to that, and see if it does not call up your recollection. I am pointing to this, if this does not refresh your recollection, Turner's memorandum, and the question is, can't you tell us what is the reason why that first quarterly determination was held up, that is holding up all the others? A. It was appealed from by the Interborough Company.

Q. On what ground? A. A number of items specified, which they thought they had not been considered in.

Q. On what ground? A. A number of items specified, which they thought they had not been considered in.

Q. Had there been any conference with the Commissioners concerning the holding up of that? A. Not by me.

Q. To your knowledge? A. To my knowledge, and you see what Turner says there.

Q. Let me read you further from this long report of Turner's, to which is attached a number of blue prints, showing in this new-fangled way the wave system, as it goes up and down. Now, this — after a long argument, Mr. Turner says to you, "As above stated, I think the charges which the Interborough have included in their statements with respect to administration and legal expenses, are relatively too high." A. Well, that is the fact.

Q. Isn't that the reason why it was held up? A. That is —

Q. Isn't that the reason why it was held up? A. I don't know that can be attributed to the reason why it was held up, no.

Q. Doesn't this — A. And there is a matter that entirely escaped my memory.

Q. Don't you think this is very important? A. Very important.

Q. Now, again, here is a correction for the bottom of page 6. A. Yes.

Q. Did you make this correction? A. No.

Q. It is headed, "Rider B." In whose handwriting is "Rider B"? A. I don't know.

Q. Don't you know whose handwriting that is? A. Looks like Turner's.

Q. I will read "Rider B": "Curve 37" — referring to these curves — "Curve 37 covers the ratio of the company's administrative and legal expenses on the City Railroad to the cost of the City Railroad, including both the City and Company contributions. This curve indicates that the Interborough administrative and legal charges accumulative since the signing of the contracts are four hundred per cent. of the like charges of the Municipal Railway Corporation, the ratio to the total cost accumulative during the same period being 0.79 of 1 per cent. in the case of the Interborough and 0.20 of 1 per cent. in the case of the Municipal Railway Corporation." A. That shows how carefully we have gone into that.

Q. "We have." Did you do that? A. I did not do that.

Q. Have any part in it? A. None at all.

Q. Did you know anything about it? A. From the memorandum.

Q. Had you read this before I read it to you? A. Yes.

Q. Do you know why the quarterly determination was held up?

A. It may have been on that account. It may have been other considerations.

Q. Don't you know now the quarterly determination was held up because there had been too much allowed for legal and administrative charges of the Interborough. That is one of the reasons, I presume.

Q. Don't you think it was because the Commissioners were afraid you were not exercising your power in a careful and conservative way? A. Not at all. That very thing shows we are exercising our power in a careful and conservative way.

Q. And do you remember now whether or not Commissioners had been talked with about this matter of your holding up — A. I have not talked with them about it.

Q. Just let me refresh your recollection from one line of this communication of December 3, 1915: "The question of advancing these determinations is still unsettled. On September 9, after very considerable informal discussion among ourselves, and with some of the Commissioners" — A. Well, I discussed it probably with Mr. Turner and Mr. Wiley, and others. I discussed it with them, probably, but not the Commissioners.

Q. What do you know about discussions of the Commissioners? A. Not anything. Mr. Turner may have discussed it with the Commissioners.

Q. Was this paper prepared to defend your determinations? A. To defend them?

Q. That I have just referred to, yes, as an afterthought? A. Why, no.

Q. You don't seem to know much about it? A. Yes, I knew about it at the time I sent it down, and when these people appealed, stating that we had not allowed them sufficient, that memorandum was made to support our contention there was.

By Mr. Shuster:

Q. Does the railroad company claim that the legal and administrative items allowed them were not sufficient? A. I think that was their claim.

Q. Their contention? A. Their appeal is in one of these files. I cannot recall—

Q. Can you recall what you allowed them? A. I can't.

Q. You don't recall any of the figures in these determinations? A. No, I don't.

Q. Did you have anything personally to do with the making of those determinations more than to sign your name? A. More than to look over them, and consulting with Mr. Turner on them, and where there was any questions on them, to give my views in reference to making up the determinations which were made and finally printed and approved by me. I have given it —

By Mr. Moss:

Q. Here is a letter, September 8, 1915, addressed to Alfred Craven, signed, T. P. Shonts, "Contract No. 3." A. Just what I told you the other day. They had made an appeal.

Q. "I am writing again at this time to inquire whether there is anything further that we can submit to you in order to enable you to render your re-determination, and, if so, I shall be pleased if you will so advise me at once." A. Yes, he was anxious the determination be made and so was I.

Mr. Shuster.— That is all, Mr. Craven.

GEORGE S. COLEMAN, recalled as a witness, having been previously sworn, testified as follows:

By Mr. Shuster:

Q. You have testified before the Committee before this? A. Yes.

Q. And you are chief counsel to the First Department, Public Service Commission? A. I am.

Q. First District. Mr. Coleman, you have heard the testimony here this morning? A. I think most of it.

Q. And will you tell us what was the first thing you did in connection with prior determination matters? A. My recollection is it was in July, 1913, after the contracts had been signed, that I had an interview with Mr. Rodgers.

Q. Who? A. Mr. Rodgers.

Q. Was that interview initiated by you or Mr. Rodgers? A. Not by me; probably by Mr. Rodgers.

Q. Where did it take place? A. In my office.

Q. Who else was there? A. I don't recall anybody else being there at the time, but I know that there was afterwards another interview, where Mr. Rodgers, Mr. Semple of our office, my first assistant, and Mr. Turner and myself were present, and Mr. Rodgers brough up some typewritten statements relating to proposed charges to be credited to the Interborough.

Q. Have you that typewritten statement? A. No, I have not, but I think it is in Mr. Turner's file, which I believe is on the table.

Q. You think you would remember it if you saw it? A. I think so.

(Witness is shown Exhibit No. 1 of March 2, 1916.) A. This is dated July 29, and that document I have seen.

Q. Yes, and that is one of the documents that was put in the record this morning, under Mr. Craven's testimony? A. It seems to me to be marked here, Exhibit No. 1.

Q. There is some pencil memorandum on that typewritten sheet? Is any of that in your handwriting? A. No.

Q. Was any of this on there at the time that it was submitted, or during that conference? A. I think that $75,000, legal expenses, I think that was there. I would not swear to it.

Q. Do you know who put it there? A. No, but I think probably Mr. Rodgers did. He brought the paper up, and I presume he did. He is here and can —

Q. You think that pencil "$75,000," legal, approximate legal expenses, was on the memorandum before it was submitted to you? A. I don't know. Mr. Rodgers can tell you that.

Q. We will have Mr. Rodgers tell us in due time. You tell us what you know about it. A. It is apparently in his figures? Whether he put it on before he came there, or after, I don't know. But I remember $75,000 was the figure he mentioned.

Q. In the conference? A. Yes.

Q. Just tell us as much as you can recollect of the conversation at that conference, starting with Mr. Rodger's entrance to your room? A. I could not tell you. I remember the items on his docu-

ment and I remember afterwards asking him to put this in writing, so as to enable me to submit it to Mr. Turner, because he had mentioned not merely legal expenses, but other expenses, called engineering, superintendence and administration, about which I knew nothing.

Q. What do you recall he specifically mentioned about superintendence and engineering? A. I would not attempt to recall anything about that, because he wrote me a letter, and I think that letter is in this file.

Q. See if you can find it? A. Yes. That is the letter.

Q. That is also a part of Exhibit 1, introduced this morning? A. Yes.

Q. And is the "memorandum for Mr. Coleman"? A. Yes. Now, he says, "In connection with Mr. Turner's investigations, the following observations" —

Q. Now, I am going to ask you not to read that. It has already been read into the record a couple of times. Can you tell us from memory anything that took place in the conference that you subsequently had after that memorandum was furnished you. You spoke of a conference in which there were four or five of you present? A. Yes, but there was something preceding this, because there was some — when Mr. Turner was present —

Q. Something before July — before this? A. Something before July 31. It may have been on the same day.

Q. Tell us what the conversation was, or what took place at that conference? A. As near as I can recall, it was the expenses that should be properly charged for administration, superintendence, engineering and legal expenses, under the arrangement propsed between the parties, and I suppose covered by the contract, for determining this first cost, what they call the prior determination. Now, Mr. Rodgers brought up — when he brought up this first typewritten statement of July 29, I think, as you see — had it in gross engineering and superintendence, one hundred and twenty-nine thousand odd dollars; administration, one hundred and seven odd thousand; nothing for legal expenses typewritten, but $75,000 put in. Now, I think, while Mr. Rodgers was there on that occasion, Mr. Turner, Mr. Semple and I probably asked Mr. Rodgers how he subdivided these expenses, in what way he pro-

posed they should be arranged, what was his idea of it, and he made statements, and I took them down on a memorandum in pencil, and I think that must be in this file. Mr. Turner keeps everything. I don't keep them.

Q. Those are already in the record. Now, Mr. Coleman — A. This is the memorandum.

Q. What was all of this matter submitted to you for? A. Well, I suppose it was with reference to legal expense primarily, because although Mr. —

Q. Legal expense in connection with what? A. In connection with what you call overhead expense, overhead charges, and legal services prior to the date of this contract, but leading up to it; what I suppose they call generally overhead charges.

Q. And for the purpose of getting — of the engineer's getting your construction or interpretation of the contract, as to what would be legal and proper? A. What I thought would be a fair charge for legal services.

Q. Was it any part of your duty to measure the value of legal services of the company? A. No part of my specific duty, but as counsel to the Commission I have advised not only the Commission as a whole, or individual Commissioners, but the head of any bureau.

Q. Weren't you performing a part of your public duties in this conference? A. I assume so, yes.

Q. Stating these were reasonable charges? A. I assume so. Now, you asked me about this memorandum here in pencil. These are my own figures. Because I was trying to find out from Mr. Rodgers how much he proposed to allow to the subway contracts, how much to the extension of the elevated system and how much to the third-tracking.

Q. Were you at all interested as to the evidential proof? A. As to what?

Q. As to these items? A. No. I was interested in getting him to support these, so far as Mr. Turner was concerned.

Q. Wasn't it first important to know there was some actual legal proof of these expenditures for the engineer to pass upon? A. Not for me. That was for Mr. Turner to take up, either personally or through his staff, with the auditor of the company.

Q. Did Mr. Turner or Mr. Craven ask you as to what would be the proper items — proper legal items — to include in his determination? A. No.

Q. Under the contract? A. No, not at all. He came down to me for my approval and as to legal expense, and Mr. Craven has testified several times this morning, and I think — I think it is because he has forgotten — that I advised him as to this $125,000 item. Now, I never did. I never had anything to do —

Q. What did you do? A. I embodied my views in a written memorandum, which I sent up to Mr. Turner after we had our conference, so he would have something on record in which I expressed — it was —

Q. On the back of this? A. On the back of Mr. Rodgers' —

Q. Read that into the record. A. "Mr. Turner: I asked Mr. Rodgers to put his ideas on paper, and he has handed me this memorandum. At our conference yesterday the subject of legal fees and superintendence and engineering were discussed, and certain figures tentatively considered. As to the legal fees, I regard them as reasonable compared with the fees usually paid to lawyers for similar services by large corporations. As to the services of the administrative officers, I am not prepared to pass on their value. Some comparison may be made with the allowances to the New York Municipal Railway Company. G. S. C."

Q. The City of New York is rather a large corporation, is it not? A. Very large.

Q. And retains lawyers? A. Yes, a good many.

Q. Is it in the habit of paying for special services outside of the salaries to those lawyers? A. No, not to my knowledge.

Q. You knew that fact? A. I should hope so. I served them sixteen years in the Corporation Counsel's office.

Q. And for what reason could you differentiate between the City, as a corporation, and its legal staff, rendering extraordinary services, as a private corporation? A. If you let me explain it. I think you are on the wrong track, wrong idea.

Q. I may be. I often am. A There has been a good deal said, possibly to-day, and a good many other days, about bonuses and salaries. Now, the City and the Commission have nothing to do with bonuses. If there have been any bonuses paid in addition to

salary, that is for the stockholders of the Interborough. What the Commission did have to consider was what was the value of the services rendered by the legal staff of the Interborough, or any counsel retained by them, leading up to this contract of March 19, 1913. Now, that is my understanding.

Q. In excess of their ordinary salaries? A. Not at all in excess. Suppose, for example — this is my idea. Suppose Mr. Rodgers had devoted three or four years of his time in the negotiations and work leading up to the dual system contract. Now, I do not care what his salary was, if it was $50,000, or $25,000, or $30,000. Every cent of that salary might have been properly charged on the Interborough side, as against every cent of the salary of Mr. Harkness and the men under him in the Rapid Transit end of our office. Now, Mr. Harkness, and his four or five assistants, did nothing else but attend to rapid transit work from the beginning. About four or five other assistants have nothing to do with rapid transit, but had with the regulatory part of the office. Now, it seems to me just as fair for the Interborough to charge against their portion, the services rendered by their attorneys, as it was for the City, through the Commission, to charge for our expenses.

Q. Is it true, despite the terms of the contract? A. I say that was what was done. I had nothing to do with making up the items. But I am informed they allowed for the City $43,000 of expense of the legal department of the Commission.

Q. Now, Mr. Coleman, you are its chief counsel, and you are trained in the law. The only charges that could be legal or proper for the engineer to consider here, are those that come within the language of the contract. Isn't that true? A. Just as constituted by the parties, fixed by the parties. I had very little to do with the making of the contracts.

Q. Do we understand that anything outside of the language of the contract, that the parties might deem to understand different from the contract, would be legal *aliunde?* A. No, not unless in support of the contract. I am speaking now of the practical handling of this matter.

Q. Do you contend here that any of these legal charges prior to the making of the contract are proper charges within the terms of Contract No. 3? A. I have always assumed that, yes, because I

have regarded them as such items are regarded in any case, for instance, of the starting of a corporation, as one of the overhead charges.

Q. Did you consult the contract when you advised that it was legal and proper expense? A. No, I had nothing to do with the —

Q. Are you familiar with the terms of the contract? A. I have read it, but it is not a thing I have much to do with, unless some special question is presented.

Q. Did you hear me read from the contract, the provisions and definitions a few minutes ago? A. Yes, and I tell you that as far as I understand, that provision was put in with the understanding by both parties that it was to cover legal expenses prior to the making of the contract by both parties.

Q. For construction, in and about construction; not in and about negotiating, financing? A. I understand, Mr. Shuster. But this is what I am trying to explain, as what I mean by overhead charges. Where a corporation —

Q. But the contract says nothing about overhead? A. Administration expense prior to the contract. If Mr. Rodger's salary for three years was devoted exclusively to bringing about contracts financially consummated, why wasn't that a proper charge for them to make?

Q. For the reason the contract did not so provide. That is for the courts to decide. That was the practical construction of both parties. Otherwise the City would not have got these millions of dollars.

Q. How did you come to a practical construction without deciding the contract itself? A. I say that was the practical construction of the parties to it.

Q. When you wrote this letter you have just read into the minutes, at the time you wrote this letter of instructions to Mr. Turner that is attached to Mr. Rodger's memorandum, did you consult the contract prior to this advice which you are giving to the subordinate of the — A. I have no recollection of that, because the understanding of everybody was that it was only a question of amount, not of character, as long as it was a legal charge. And all those matters of detail in all these things, were so fully and capably explained by Mr. Harkness, that it was only in this particu-

lar case, as to value, not as to contract itself, that was before me, value of the services.

Q. You were an expert on values of legal services in this matter? A. I don't claim to be an expert, no, because it is a hard thing to appraise the value of legal services.

Q. Was the question of values at issue? Wasn't it the question of costs? A. The value of services as entering into the costs. That is my understanding.

Q. I read from one of the files of your Commission:

"March 19, 1914.

"Public Service Commission for the First District:

"Sirs.— In accordance with the Chairman's suggestion, I desire to advise the Commission that in my opinion the legal expenses of Interborough Rapid Transit Company included in the determination of the chief engineer, dated October 14, 1913, of the cost of construction and cost of equipment under Contract No. 3, paid or accrued prior to March 19, 1913, are reasonable.

"Respectfully yours,

"GEORGE S. COLEMAN,

"Counsel."

You wrote that?

(Letter marked Exhibit 4 of March 2, 1916, V. E. Valva.)

A. That is, I passed on the reasonableness of it. The determination was held up by objections. I stand for that. If you let me see the letter —

Q. And it could not have passed without your approval? A. Certainly it could. The Commission did not take it up until about this time.

Q. What was the Chairman's suggestion? Can you find that in the file? What called forth your letter? A. No, I cannot find it. Let me see. I cannot find it, but I assume —

Q. You don't consider their services reasonable if they are not legal services? A. Might have been reasonable services. But it was not a question as to whether they were permissible charges under the contract.

Q. Do you wish us to understand that you did not pass upon

the question as to whether or not these legal — these charges for legal services under the contract, were legal services, were legal charges under the contract, lawful charges? A. The question was never raised, because as I told you, both parties acted on the assumption, both the City acting through the Commission —

Q. Answer the question, if you can, and if you cannot, say so.

Chairman Thompson.— Read the question.

(Question was read by the stenographer.)

A. I don't remember ever having been asked, having passed upon that.

Q. Did you? A. I have no recollection of passing upon that question.

Q. That is the only answer you can give? A. Yes, I say I can —

Q. Just a moment. Didn't you conceive it your duty to know what would be proper and lawful items for the engineer to consider in his determination? A. No.

Q. And when the Commission instructed you, as its counsel, to file objections to that prior determination, against these very items, did the question as to whether they were lawful items or not occur to you? A. Not at all to me personally? Even this very letter was dictated by Mr. Harkness, who had been in it from the beginning, and knows everything about it.

By Mr. Moss:

Q. Didn't you know Mr. Craven was no lawyer? A. Yes.

Q. He could not determine whether the legal services were proper with the contract, could he? A. No, and that was not the question addressed to me.

Q. Whether it was addressed to you or not, wasn't it your duty? A. I don't think so. When I find a man like Harkness attending to those matters, I would implicitly take his word.

Q. Did Mr. Harkness tell you they were legal under the contract? A. Never mentioned the legality. He said both sides were assuming it was legal. Never questioned the legality.

(Chairman Thompson resumes the chair.)

By Mr. Shuster:

Q. Is it legal? Are they legal items? A. I have not any doubt of it.

Q. Upon what theory? A. These were all overhead charges, properly to be considered in determining what each side had contributed to this great enterprise, and I say if the City gets over a million dollars, a million and a quarter on this proposition, and the Interborough gets about $327,000, the City has no right to complain.

Q. Regardless of what the contract contains? A. Yes. I think you were mistaken about the contract. It has been to the City's advantage. Not the Interborough's.

Q. What item is it in the City's allowance that corresponds with these gifts or payments for special services? A. As I understand it, I have nothing to do with that.

Chairman Thompson.— Answer the question.

Mr. Coleman.— I am trying to.

Chairman Thompson.— Then do it.

Mr. Coleman.— I think about $43,000 were allowed for the services of the legal department of the Commission.

By Mr. Shuster:

Q. In excess of the regular salaries paid to— A. You are all mistaken on that proposition. They have charged against this contract, these contracts, the value of the services of our staff, which had already been paid — paid through our salaries, but they have made $43,000 of all legal expenses, a part of the contribution by the City.

By Chairman Thompson:

Q. Bonuses, you mean. Do you fellows get extra pay? A. No.

Q. And does it correspond to the extra pay to those others? A. That extra pay has nothing to do with the City contracts. And you don't seem, any of you, to understand —

Q. I do. A. I don't think you do.

Q. I know that Mr. Rodgers gets a regular salary. A. Yes.

Q. And I know when he gets $50,000 more than that, it is a bonus? A. It does not come out of the City.

Q. I know what you get? A. Yes.

Q. Do you get anything additional? A. Not a bit.

Q. What you got didn't correspond to what he got? A. Didn't correspond because —

Q. Then it didn't correspond? A. That has nothing to do —

Q. That is not the question. I asked you whether or not what you got corresponded to what he got? A. I got nothing extra.

Q. He did get something? A. I hope so.

Q. You knew it? A. No, I assume it.

Q. How did it correspond? A. Because a part of my salary, which had been paid to me, part of Mr. Harkness's salary, part of all those —

Q. I understand. A. — has been credited to the City as a contribution toward this work.

Q. Don't you think I understand that situation? A. Yes, but I don't think you understand the other. I don't think you have straight before this community —

Chairman Thompson.— Here is a case we have got to have all the cards on the board.

By Mr. Shuster:

Q. Now, Mr. Coleman, did you say that this money does not — that these charges do not come out of the City? A. I say these bonuses, so-called, do not come out of the City, because we are not —

Q. Even though they are in the determination? A. They are not in the determination. There are no bonuses in the determination, not a dollar of bonus in the determination.

By Mr. Moss:

Q. What did the engineer pass on? A. On the overhead charges, administration, up to the time —

Q. Didn't he approve the bonus of Rodgers of $50,000? A. There was none to Rodgers.

Chairman Thompson.— We agree we don't understand you.

Mr. Coleman.— You don't. You apparently do not understand the situation.

By Mr. Shuster:

Q. What evidence did you have before you that any of these

items were legal and proper charges under the contract? A. Why, I had the information that came from Mr. Rodgers himself.

Q. Information that came from Mr. Rodgers. Purely an *ex parte* statement of Mr. Rodgers? A. It was, and I have known him for years, and I take his word without bond.

Q. As a public official, did you have a right to take anybody's word? A. Yes, I think so.

Q. In a matter of this kind? A. He was telling me facts. He told me just what had been paid.

Q. Let me direct your attention to this memorandum, and you will note they claimed $1,532,000 was expenses by them and properly chargeable in this account? A. I had nothing to do with that.

Q. That is their word? A. Yes.

Q. What did you have to substantiate any of that amount in the form of legal proof? A. I did not consider it; it was not put up to me.

Q. You know what legal proof is as a lawyer? A. I think I do; and I have been mistaken, if you call some of this legal proof, about bonuses here.

Q. What character of proof did you have other than this *ex parte* statement, not signed by anybody? A. I will say now that this matter was not presented to me, about the char — (sic) of proof of the $1,532,000.

Q. Why should it have been presented to you for any purpose? A. Mr. Rogers wanted to bring up everything Mr. Turner should pass on.

Q. Why shouldn't it have been submitted in due form to the engineer, who should determine those things? A. I suppose it should have been.

Q. It was not. It was delivered to you, and you as the medium for the Interborough Company, gave it into the hands of the Interborough? A. That was their claim. Now, as to all these items, other than legal —

Q. That claim was not submitted to anyone other than you in connection with the Commission? A. That was because they thought I had to pass on the legal expenses, and when Mr. Rodgers —

Q. The legal expenses were the smallest part of the items of their claim? A. Well, not the smallest.

Q. Didn't you discuss every item in that claim? A. I no doubt discussed every item in that claim, and probably Mr. Rodgers, although he does not itemize these, gave me the items, or told me Mr. Gaynor, the auditor, would produce them.

Q. Did they? A. I don't — may have a letter.

Q. You did not receive them? A. I had nothing to do with those, nothing to do with anything except to answer whether I thought the legal charges were fair.

Q. Aside from your confidence in Mr. Rodgers, you had not before you and never had before you a single bit of legal proof that those charges are either correct or incorrect, that they are lawful or unlawful, under the contract? A. You mean engineering and superintendence?

Q. Any of those? No. But I have no doubt Mr. Harkness has seen every scrap.

Q. You placed the burden on Mr. Harkness? A. He would be glad to take it. I had none of the details.

Q. He was your assistant? A. He was my assistant, and had nothing to do but attend to rapid transit matters.

Q. And when you wrote the letter recommending to the Commission that these services were reasonable — A. The legal services.

Q. — you depended on Mr. Harkness's assurance to you that they were reasonable, did you? A. No, because I took that up with Mr. Rodgers and I knew the parties mentioned, I knew Mr. Rodgers. I had seen his work and if they had put the whole $65,000 as a payment to Mr. Rodgers, I would not have regarded it as excessive.

Q. Do you know whether any part of Mr. Rodger's salary got into the determination? A. I suppose it was all the regular salary that got into the determination, nothing but regular salary.

Q. If that is not true, then you were deceived, weren't you? A. I may have been mistaken.

Q. You were deceived? A. I don't know when he got his bonus of $50,000.

Q. So that you don't know about what that payment of $50,000

was? A. I would say this: He got $30,000 a year, as I understand it. He was working several years on this proposition. If he had received $65,000, or even the whole $75,000, I should not have regarded that excessive.

Q. Even though the contract did not allow it? A. That is another question. That was the practical construction by both parties of that contract, and I have never had to pass upon that question.

By Chairman Thompson:

Q. What do you take? Do you take their practical construction? Don't you consider these contracts according to what they are? A. I consider any matter put up to me by the Commission, or discuss any matter presented to me by my associates, but I have scarcely anything to do with these rapid transit matters, unless they come to me expressly. It would not make any difference whether this $50,000 —

Q. You have said that. A. Whether it was paid after or —

Q. The question as to whether or not your regard for a man, or your sorrow for him, on account of his having worked so hard, should be assessed from the City tax-roll — that is going quite a way. A. But when you take his services for three years at $90,000; that is the point.

Q. You want to increase the salaries of all the overworked employees? A. I should like to; there are so many who are not sufficiently paid.

Mr. Moss.— Well, if everybody who is morally entitled to get a recompense from the City, could get it that way —

By Chairman Thompson:

Q. If that is the basis you put it on, rather than a legal proposition — that is what we understand? A. I say again, Mr. Chairman, that even the suspicion of the legality or illegality of that clause was never argued, never presented for argument.

By Mr. Shuster:

Q. Wasn't that some part of your duty as counsel to the Commission, and counsel to the engineer? A. Well —

Q. Aren't you the custodian of the legality of transactions of

the Commission? A. I must say I have answered the problems that have been put up to me. I don't go looking for trouble. I have had all I can do to take care of —

Q. The question of the legality of these items never entered your head when the matter was under discussion? A. What?

Q. The legality of these transactions, of these items, these claims? A. No doubt ever came into my mind that these were not legal charges, just as in any enterprise, where you go back and take in overhead charges of lawyers and engineers.

Q. You did not consult the contract to see whether those things were properly chargeable under the contract? A. I have no recollection of consulting the contract, because the practical assumption had been — and we were having our own —

Q. When the contract does not provide for those allowances — don't you think it would be helpful to consult the contract? Take your interpretation of Article II, 17 and 5. A. I have read them.

Q. I would like to made right on that? A. My opinions go to the Commission, Mr. Counsel.

Q. Your opinion to the Commission is, it is legal? A. My opinion to the Commission — you might say it was lawful — my opinion to the Commission was as to the reasonableness.

Q. If not legal, then not unreasonable? A. The services would be worth that, but not a proper charge, if not legal.

By Chairman Thompson:

Q. What investigation did you make to find out what the service was? A. I took that from Mr. Rodgers, and from circumstances like this: For example, part of these expenses were allowed — part of the legal expenses —

Q. I asked what investigation you made. Just confine your answer. A. My investigation was — consisted of the information derived from Mr. Rodgers, in the first instance, and from talking to Mr. Harkness, about his knowledge of affairs because it involved —

Q. I don't care what it involved. What investigation did you make? A. No outside investigation. I did not ask to see the books of the Interborough.

Q. All the investigation you made was talking to Mr. Rodgers and Mr. Harkness? A. Yes, about what the services — what —

Q. Just what investigation you made. That is all you made? A. Yes.

Mr. Smith.— Mr. Coleman said that the practical construction of the contracts was that it was to include these items he calls overhead charges. Now, on the part of the City, who made that practical construction?

Mr. Coleman.— I think it was done by Mr. Whitney, probably in collaboration with Mr. Harkness, because Mr. Whitney, as secretary, made up all these items, and went back as far as 1905.

By Mr. Smith:

Q. So you accepted the opinion of Mr. Whitney, the secretary, and your subordinate, Mr. Harkness, as to the practical construction of the contract? A. I would regard that as the practical construction.

Q. You did or did not? A. The question never arose.

Chairman Thompson.— Answer the question.

Mr. Coleman.— The question was never put up.

By Mr. Smith:

Q. No, but you defend yourself in the payment of these sums, or the reasonableness of these sums, by saying the practical construction of the contracts justified them? A. Yes.

Q. Just a moment. You did say that. Now, that practical construction came, as you say, through Mr. Whitney, a subordinate of the Commission, as secretary of the Commission, and Mr. Harkness, one of your subordinate counsel? A. Yes.

Q. Now, so far, so good. Now, another question: You say that your opinion was rendered on the reasonableness of the charges, payment to Mr. Rodgers? A. That was what I assumed.

Q. The question at issue. And you distinguished a short time ago in your testimony, that there was a difference between reasonableness and legality, that a charge might be reasonable, and yet not be legal? A. Yes.

Q. Now, will you please tell me what interest the City of New

York had in the reasonableness of any charge? A. Because if Mr. Rodgers, for instance, if it had been put at $250,000, it would diminish by so much the cash contribution from the Interborough.

Q. I will use a timely illustration, if I can. If Mr. Harkness, your subordinate, was enabled to purchase a $200 watch for $100, you would say the charge for this watch was a reasonable charge? A. If it was worth $200, and he got it for $100.

Q. Yes. But there is any possible way in your mind that it would find its way into the Commission accounts as a legal charge against the Commission? A. I don't see; not at present.

Q. Now, Mr. Rodgers's $50,000 might be a reasonable charge for one, two or four years' extra service; that is true, and we will concede it, but if, under the contract, it was not a legal charge, can you find any way that it could arise as an expense against the City of New York? A. Of course not.

Q. So the question of legality, rather than the question of reasonableness was the sole issue? A. No. The only thing put to me was reasonableness, and I have never passed upon the question.

Q. The only question that interested the City of New York was legality and not reasonableness? A. No, no. That question was never raised, because we were getting ten times more than they were.

Q. Was it not your duty to raise it? A. As I say, I don't know what you expect my duty to be.

Chairman Thompson.— What do you expect your duty to be?

By Mr. Smith:

Q. Was it your duty to raise it, independent of any request of any other source in the Commission or employees? A. My duty is to pass upon any question presented, or if I happen to discover anything irregular or illegal, to call attention to it.

By Mr. Moss.— You said you were not looking for trouble? No? A. No.

Q. I just want two or three simple answers to two or three simple questions. I refer now to Exhibit 1 of this date. You recognize it? Where was the conference held where this paper was considered? A. It was, I think, in my room on the eighteenth floor of the Tribune building.

Q. Was it on the date which it bears, July 29th, 1913? A. I assume so. I don't know. My letter was written two days later.

Q. Who was present at that conference, everybody who was there? A. I think Mr. Rogers, and Mr. Semple, Mr. Turner and myself.

Q. Mr. Rogers represented the railroad? A. Yes.

Q. And himself, so far as you judge, of the reasonableness of his charge? A. Yes.

Q. Mr. Semple represented your department? A. My first assistant.

Q. Was Mr. Harkness present? A. Not at that time.

Q. And Mr. Turner represented the engineering side of the Public Service Commission? A. Yes.

Q. Who was there in that conference to represent the City of New York? A. Well, the Commission acts for that. I presume I was representing the City.

Q. You represented the City of New York for every purpose that was germane to that meeting, in that conference? A. I assume so.

Q. Mr. Semple was your subordinate? A. Yes.

Q. And Mr. Turner was no lawyer? A. No.

Q. Now, you knew Mr. Turner represented Mr. Craven, the Chief Engineer? A. Certainly.

Q. And you knew Mr. Craven had a judicial duty to perform, under the contract, didn't you? A. Why, yes. That was not discussed.

Q. You knew that? A. Of course.

Q. You knew Mr. Craven, in the performance of an official duty, he not being a lawyer, naturally would fall back upon you, the legal — representative of the law towards the Commission? A. In any legal question, yes.

Q. Now, this paper indicates that a field was traveled and subjects were discussed covering many other matters than legal charges? A. Yes, and they probably all were discussed.

Q. Were all of these subjects discussed in your presence? A. I assume so, because we were there all together while that paper was discussed.

Q. Did you take part in the discussion of any of these subjects?

A. I don't recall about the discussion. I think probably, while we were asking Mr. Rogers about his explanation.

Q. Were you asked your advice in any other matter than the reasonableness of the legal charges? A. No matter what was said, I was asked about the reasonableness.

Q. That is all? A. Yes.

Q. Who asked you? A. Mr. Turner wanted my approval of the legal necessities.

Q. Of the amount or their legality? A. Purely the amount.

Q. Well, Mr. Turner was practically subordinate to you wasn't he? A. No, not at all.

Q. Subordinate to you in the matters of law? A. Nothing to do with — I have no control —

Q. He is a layman? A. Yes.

Q. Does a layman always know what legal questions to raise? A. Some laymen do.

Q. Do they all? A. They are not supposed to?

Q. When a man has a lawyer, the lawyer is to answer not only the questions the laymen asks him, but all those occuring to him as a lawyer, surrounding the situation he is in? A. Yes.

Q. If Mr. Turner only asked you whether those services were reasonable, didn't it occur to you that you owed the duty to Mr. Turner and the City of New York to see the legal services, even though reasonable, were legal? A. Never occurred to me.

Q. Did you consider the legality of any of these charges other than the legal charges? A. The legality?

Q. Yes. A. No, it was only of the amount.

Q. Then who was representing the City of New York, passing upon the question whether these charges were legal? A. If — with respect to anything that would come up, I should suppose, if any questions possibly would be raised, it would be suggested by Mr. Harkness.

Q. Why? Because those were matters of detail, even as to the questions of law.

Q. Mr. Harkness was your subordinate? A. He was my subordinate in position.

Q. He was not there? A. He was my superior in knowledge of those contracts.

Q. What? He was my superior in knowledge of those contracts.
Q. How much salary does he get? A. He gets, I think $7,500.
Q. How much do you get. A. I get $10,000.
Q. Who gives him his orders? A. Mr. Harkness.
Q. Who gives him his orders? A. Mr. Harkness.

Chairman Thompson.— Answer the question.

By Mr. Moss:
Q. Who gives him his orders? A. I don't think anybody.
Q. Does he report to you? A. Yes.
Q. Are you chief counsel? A. I am chief counsel.
Q. Is he assistant counsel? A. He is assistant counsel.
Q. Now, here is a paper which includes these items: Engineering and Superintendence, $129,659.09; Administration, $107,327.15; Legal Expenses no amount, but it was included apparently in the amount of $1,532,000. Now, there being no item attached to legal expenses, I am urged to ask you, were you the appraiser there? A. I was expected to pass — to express my opinion, whether the charges made by counsel were reasonable?

Mr. Shuster why?

Mr. Coleman.— Because I think Mr. Turner said the engineers did not know how to pass upon the value of legal services.

By Mr. Moss:
Q. Did you know that Mr. Craven, the Chief Engineer, having the sole power and the sole duty to pass these matters, was going to pass upon them, after this conference? A. Well, I knew he would have to.
Q. You knew he would have to? A. Yes.
Q. And then, I ask you again, who was there in that final conference which you are telling about, to represent the City of New York, regarding the legality of these charges, except yourself and your assistant, Mr. Semple, in that conference? A. There was not anybody to represent the City except ourselves.
Q. Was the city represented by anybody, then, to determine whether these large items were legal or not? A. Not the City as distinguished from the Commission.
Q. Was there anyone there representing the Commission to de-

cide whether these various services were legal, that is, under the contract, or not? A. That question was not raised.

Q. Was there anyone there to do it? A. You know all who were there.

Q. Was there anyone there to do it? A. I think I have answered that.

Chairman Thompson.— You have not. Answer it.

Mr. Coleman.— Was there anybody?

By Mr. Moss:

Q. To pass upon the legality, under the contract, of all of these charges?

Chairman Thompson.— Answer yes or no.

Mr. Coleman.— We were there.

Chairman Thompson.— Answer the question yes or no.

By Mr. Moss:

Q. Were you there, was anyone there, to do that act, to pass on the legality of these various charges? A. That question was never raised.

Chairman Thompson.— Now, just answer the question.

Mr. Coleman.— I was there.

By Mr. Moss:

Q. To do it? A. To pass upon the reasonableness of those charges?

Chairman Thompson.— Your answer is yes?

Mr. Coleman.— Assume it, if you want to.

Mr. Moss.— Assume nothing.

Chairman Thompson.— Your answer is yes.

Mr. Coleman.— I am telling you what I was there for.

By Mr. Moss:

Q. Was there anyone to pass upon the question whether all of

these charges were legal under the contract? A. There was no one there called there for that purpose.

Q. I didn't ask whether call for that purpose. A. You know who was there.

Chairman Thompson.— Read the question.

(The question was read by the stenographer as follows:)

"Was there anyone to pass upon the question whether all of these charges were legal under the contract?" A. There was nobody there except Mr. Semple —

Chairman Thompson.— Answer yes or no.

Mr. Coleman.— That I cannot do.

Chairman Thompson.— You refuse? Answer yes or no.

Mr. Coleman.— I decline to answer.

Chairman Thompson.— You decline to answer yes or no?

Mr. Coleman.— We will have the question read.

(The same question was repeated by the stenographer:)

Chairman Thompson.— Now, you can make an explanation afterwards, but you can answer that question yes or no.

Mr. Coleman.— I say no, with this qualification —

Chairman Thompson.— Now make you explanation.

Mr. Coleman.— There was no one there to whom that question was addressed. No, if you want to ask me whether I was there to find out whether they were reasonable, I say yes, as to legal expenses, not as to the others. And the question of the legality was never raised.

By Mr. Moss:

Q. Well — A. In fact, I never heard it raised until I can here.

Q. Was there anyone in that conference that was responsible as to whether these various charges were legal and within the contract? A. I suppose the ultimate responsibility would rest upon my shoulders.

Q. Then why didn't you discharge it? A. Because the question was never raised.

Q. Why did you wait for somebody to ask the question? A. Well, you cannot think of everything at once. There may be a hundred questions.

Q. Who was there that should have asked the question? A. Nobody was in that room, but I think the men who slept with that contract, would understand it.

Q. Who knew that this important conference was going to be had? A. Mr. Rogers, Mr. Semple, Mr. Turner and myself.

Q. Mr. Rogers had a personal interest? A. Yes, sir.

Q. Mr. Semple was simply a reflection of you? A. No, because Mr. Semple —

Q. He was your assistant? A. Yes, but he had special knowledge.

Q. We are speaking of responsibility. .Who else was present? A. Mr. Turner and myself.

Q. He represented the same institutions that you did, and of which you are the legal representative. Did the Mayor know that conference was going to be had? A. I don't know.

Q. Did Mr. Harkness know it? A. I don't know whether he knew it, at the time, but he knew all about it.

Q. Did the Comptroller know it? A. I don't know.

Q. Did any Commissioner of the Public Service know it? A. I presume not.

Q. Did Mr. Whitney know it? A. I don't know; not when it was going on. He knew about the situation.

Q. Now, as the responsibility for all the legal questions was upon you, did you take any measures to find out whether the Mayor, whether the Public Service Commissioners, whether the Secretary of the Public Service Commission, or anybody else who represented the City of New York had a voice in this conference? A. No. It would not have been natural to arise, because in every conference we have there are those there who handle the matters in our own office. If it was a matter where the Board of Estimate was concerned, or a matter in which the Dock Department was concerned, some representative would be there. This was a matter which counsel for the Interborough and counsel for the Commis-

sion would have to submit and then there would be final action. If after that had gone to Mr. Craven he had asked anything about legality, or Mr. Harkness, who was daily with him, had thought there was any doubt about it, I would have had my mind charged with that question. It was never put up to me.

Q. Why not put it up to yourself? A. You can say that of lots of things. I never suspected. I don't think now it is legal — offhand, your construction is not correct.

Q. You are speaking offhand now? A. Yes.

Q. Is this the first time you have thought of it? A. The first time the question of legality has been suggested.

Q. What? A. To me, yes.

Q. To your own mind? A. Yes.

Q. After all the discussion about this matter, is this, or here, the first it has come to your mind? A. It is —

Q. A question of law? A. Of legality. I have read reams about bonuses. The Legality —

Chairman Thompson.— It is a surprise to me that so many people in New York don't read the newspapers — you and George W. Young, both.

Mr. Coleman.— There are too many newspapers to read them all.

My Mr. Shuster:

Q. Mr. Coleman, the Commission ordered you to appeal and file objections against this very item, did it not? A. They requested me to keep the matter —

Q. Were you in any way embarrassed to represent the Commission in opposition to these items after you had approved of them, and declared them reasonable? A. No. Until a thing is done right, it is not done. If anybody called my attention to a question of law, I would have corrected it. That is my duty.

By Mr. Moss:

Q. Does it occur to you that possibly services which are reasonable as between the parties, may be illegal when the attempt is made to charge it against some other person? A. That is elementary, of course.

Q. In your letter here, which was put in evidence, of March 19, 1914, you say those services are reasonable? A. Yes.

Q. Did you mean, then, to limit your responsibility to the question of reasonableness? A. That is what I think, because that is what I did six months before.

Q. Why didn't you say "reasonable and legal?" A. Because I say the question of their being illegal was never raised or suggested.

Q. Isn't it peculiar that you limit yourself in a letter like this, to "reasonable?" A. No, I don't think so.

Q. Would you not naturally have said "reasonable and legal?" A. No, I don't think so. That letter was drafted very carefully by Mr. Harkness.

Q. Did you mean to limit yourself to reasonableness in this? A. I certainly did.

Q. Listen to it: "In accordance with the Chairman's suggestion, I desire to advise the Commission that in my opinion the legal expenses of the Interborough Rapid Transit Company, included in the determination of the Chief Engineer, dated October 14, 1913, of the cost of construction and cost of equipment under Countract No. 3, paid or accrued prior to March 19, 1913, are reasonable." A. Yes.

Q. Now, did you constantly limit yourself there to a declaration of reasonableness, as distinct from a declaration of legal? A. Yes, Mr. Moss. If you read that letter, it was the legal services of the Interborough. That meant services of their legal department, not whether they were legal, or legal services.

Q. Without questioning the propriety of the Interborough giving Mr. Rogers $50,000 for the value of his extra services — it is in my mind — if Mr. Rogers could induce you to see that as a reasonable claim, and could induce you to allow it as against the interest to come of the City of New York, didn't it seem to you there was a responsibility upon you more than to pass upon the reasonableness of the Interborough's generosities, but to determine whether the City of New York should take up the burden of the Interborough's generosity? A. Why, if the question had occurred in any way, Mr. Moss, I should have considered it, but I

say it never occurred to me, because it was assumed by everybody these things were right.

Q. You say this was a deliberate statement in this letter, using the word "reasonable" to save yourself, against criticism in the future? A. I say that was what I wanted to take responsibility of because I thought the Chairman of the Commission, when they were about to act upon that, wanted to be protected in not allowing too much.

Q. Were you putting it up to the Commission to ask you the question whether the services, ever though reasonable, were legal? A. This is in answer to a moderate request from the Chairman to state whether they were reasonable. It was the suggestion of the Chairman.

Q. Moderate?

By Chairman Thompson:

Q. You say the reason why that word "legal expenses," is because they referred to legal expenses when brought to your attention? A. The Legal Department as distinguished from administration.

Q. You have the word "Legal Expenses." Before, you said they were reasonable, without passing on the legality? A. Yes.

Q. If they had written and asked you whether they were illegal, or reasonable, would you have said what you have said? A. Of course not. If they had said, "illegal expenses" I should first find out what expenses they were referring to.

Q. If they had said, "Illegal Expenses," then you would have looked into the legality? A. You are making a play upon words, now, Mr. Chairman.

Q. I am trying to get at the actual situation. A. I say, the word "legal expenses" of the Interborough in that letter, would only have one meaning to a lawyer, and you are a lawyer. It meant the expenses which they were — charges for the legal services of their staff.

Q. What do you think your services are worth, as legal services, when you only pass on reasonableness of an item, and not legality? A. That particular item?

Q. Anything? A. I will have to refer that to the Commission. I would not like to pass upon the value of my own services.

Q. You always make it a general rule to act only in matters brought to your attention? A. I have nothing to do with that.

Q. As a general rule? A. Yes, my theory is to take care of the things day by day, and don't charge my memory with things beyond.

Q. You never in your department originate an idea as to the legality of anything that passes along the Commission without somebody outside of your department bringing it to your department? A. No. I have a staff of assistants. Every opinion that any assistant drafts I read. There are many items when I change the form of an opinion. There are a number of times when I have to differ with my assistants as to conclusions. The responsibility is mine. Now, it doesn't make any difference whether it is a rapid transit matter, or a matter of rate or a matter of service or transfers, or grade crossings, or what it is. Everything goes through my hands and I am responsible for the correctness of every opinion. Now, I have changed them many times as to form and very often as to results. That is my responsibility. I have to stand for it. But I say, if I should happen to think of anything, walking across the bridge, or in the street, I want to run it down myself. I must attend to things as they come to me, as the head of the department.

Q. You didn't answer my question. Q. What is the question again.

Q. I presume you have forgotten it. I want to refer you back. You said you did know there was no bonus allowed.

Q. What? A. I think you said you knew there were no bounses allowed? A. That was my information.

Q. You said you knew. Do you want to stand on that? A. I will have to say I have been told no bonuses entered into this cost, predetermination.

Q. You don't want to stand on your proposition you know there were none allowed? A. It is a matter of hearsay. I don't know.

Q. Your testimony is already down? A. I will say I understand no bonuses entered into the allowances proposed for counsel in the predetermination.

Q. Now will you answer my question? A. Do you want to

stand on the testimony you knew no bonuses were allowed? A. I should say I understood so. That is all I can say.

Q. You don't want to stand on the testimony? A. There are many things you understand that you cannot say you know.

Q. You understood that from where? From hearsay? A. Common knowledge.

Q. Where did you get your hearsay? A. You can't tell.

Q. Where did you get yours? A. Do you know? A. No.

Q. You don't know anything about it? A. I knew there were no bonuses.

Q. How did you know? A. What was in the minds of all the parties was the value of the services paid for by the Interborough.

Q. I am not talking about the value at all; I am talking about bonuses. A. What I say as to bonuses is this —

Q. I don't want to know that. How do you know no bonuses were allowed? A. I don't want a definition of bonus? A. If any bonus was paid, I never heard of it, in connection with any of these matters that have come to us.

Q. That is what you mean? A. That is what I mean.

Q. You said there were overhead charges? A. Under the head of what they call —

Q. Over head charges? A. Yes.

Q. If there were overhead charges, that would be something charged while the work was going on? A. Yes, if you are looking backwards.

Q. This work was all done prior to the 31st of March, 1913, wasn't it? A. The legal work?

Q. Yes? A. Yes, sir.

Q. All the work that entered into this prior to determination, and all the overhead charges were — must have been made prior to March 31, 1913? A. Yes.

Q. You think it is possible — you regard something as an overhead charge prior to March 31, 1913, that was not charged at all on the books prior to that date? A. I don't know anything about what was charged on the books.

Q. Do you think it a proper characterization, to charge as an overhead charge, when it did not appear on the books a minute? A. Didn't make any difference whether it was on the books.

Q. It did go into legality? A. No, not a question of what appeared on the books.

By Mr. Shuster:

Q. You make some difference as to whether it was in the minds of the parties at the time of the signing of the contracts, if it was not in existence, it was an obligation? A. Yes.

Q. You can answer that? A. Whether it was in the books or not?

Q. You have been depending on the minds of the parties for practical interpretations. How could it be in the minds of the parties if it was not in existence as a charge on the books of the Interborough, and brought to the attention of the people? A. As a legal proposition, I have always understood that —

Q. You were not dealing with legal propositions. A. I understood —

Q. Now, you filed, under the instructions of the Commission, objections and appeals from this determination, this prior determination, did you not? A. I assume so.

Q. You stated as the grounds of that objection what I am now reading from, a copy from the office of counsel of the Public Service Commission, of the Commissioners objections to the allowance to the city — to the Commission's appeal from Mr. Craven's determination. And the reasons are these — (reading) "The reasons for such objections are that such items" — listen to me, please — "so determined are by the Commission deemed excessive, unreasonable and improper and in excess of the amounts that should properly be allowed. Dated November 18th, 1913, George S. Coleman, Counsel to the Public Service Commission for the First District." A. That is just like —

Q. What does that mean? A. What means — you are making your objections formal, as you would demur to your complaint. You are making formal objections.

Q. Is this true? A. "The reasons for such objections are that such items so determined are by the Commission deemed excessive, unreasonable and improper" — by the Commissioners deemed. I pass on none of these except the legal. That was necessary in order to —

Q. Didn't you prepare that? A. No.

Q. You signed it? A. I signed it.

Q. Did you read it when you signed it? A. Of course.

Q. Did you believe it when you signed it? A. Yes.

Q. Was it true when you signed it? A. I assume so — "by the Commissioner deemed excessive." I take it Mr. Moss would understand it, as a formal statement of objection.

Q. Did the Commissioners know what they were deeming? A. I have no doubt they did.

Q. Did you question that the Commission was right there? A. In what they deemed?

Q. Yes? A. I don't know that they thought. If they said, "deemed unreasonable, improper and expensive," if they were referring to legal expenses, I should say they were wrong.

Q. Did you so advise them before you authorized them to make this objection and signed the — A. No.

Q. The legal expenses are included? A. I say that is what they deemed. That is a formal matter any lawyer would understand. You make formal objections and you file them.

Q. Isn't this matter of determination taken seriously by anybody in the Commission, connected with the Commission? A. I think it was. It was held up for about six months.

Q. And you dismissed — that is as merely a formal matter? A. The filing of objections would be a formal matter. The filing of objections would be a formal matter within the time limit.

Q. It is absolutely done to prevent the determination becoming final against the City? A. Yes, and therefore they must be filed, unless they have come to an agreement in advance.

Q. It is not a question of agreement under the determination? A. Suppose either side should appeal.

Q. The Commission appealed? A. Why did they appeal?

Q. For the reasons they stated there. A. Because some of these items were by them deemed excessive and unreasonable. That is a formal way of keeping the question alive. We have passed upon it since.

Q. Who prepared that, did you? A. I could not tell you. I probably did not prepare this paper.

Chairman Thompson.— He says he didn't prepare it. He signed it.

By Mr. Moss:

Q. Did you know what was in it when you signed it? A. These words, "By the Commission deemed," are inserted in pencil.

By Mr. Shuster:

Q. I assume that is a correct copy? A. That is a correct copy. Looks as though it was taken from the files?

Q. Out of your own files? A. Yes.

Q. Do you deem that a true statement, or did did you when you signed it? A. Why, if I signed it, I deemed it a true statement, that the Commissioners deemed these things unreasonable and excessive. It does not specify all — does not specify what they are.

Q. Did you realize at the time you signed that, Mr. Coleman, that you were in an embarrassing situation, as having already appraised the services? A. Not at all.

Q. The value of them? A. I did not.

Q. And put yourself on record as holding they were reasonable? A. Not at all. I felt no embarrassment about having an appeal taken to keep the matter alive.

Q. What happened to that appeal? A. Disposed of because the thing went through at the end.

Q. Did you advise in regard to this appeal, or have anything to do with it afterwards? A. I have no recollection of advising. I suppose the other side filed objections.

Q. You gave it no further attention after you signed? A. I don't recollect it ever came to my attention again.

Q. Do you recall having written a letter some time after that to the Commission, advising them that the appeal should be withdrawn and the objections rescinded? A. I have no doubt I signed such a letter, and probably by that time whatever had been in mind to be considered had been disposed of.

Q. By conference? A. I dare say, but not to which I was a party. These were matters I did not handle, except officially.

(The document referred to was marked Exhibit No. 5 of March 2, 1916, V. E. Valva.)

Mr. Moss.— This document is marked in evidence. Put it in, in full, in the record.

"In the Matter of the Determination of the Chief Engineer of the Public Service Commission for the First District under the contract, dated March 19, 1913, between the City of New York, acting by the Public Service Commission for the First District, and Interboro Rapid Transit Company, of the cost of construction and cost of equipment of the Railroad paid or accrued prior to March 19, 1913.

"To Alfred Craven, Chief Engineer of the Public Service Commission:

"Sir:

"You will please take notice that the Public Service Commission for the First District under and in pursuance of the provisions of the contract dated March 19th, 1913, between The City of New York and Interborough Rapid Transit Company, hereby files with you the following statement in writing of the items of your determination dated October 14, 1913, objected to by it and the reasons for such objections, to wit.:

"The items objected to are:

"The cost of

"(5) Lessee's expenses for superintendence, etc., in and about construction for the specified portions, or lines, of the Railroad is as follows:

"(I)	Seventh Avenue-Lexington Avenue Line:	
	(a) Seventh Avenue Branch.....	$81,589.50
	(b) Lexington Avenue Branch.....	108,786.01
"(II)	Eastern Parkway Line.....	40,794.75
"(III)	Steinway Tunnel Line.....	27,196.50
"(IV)	White Plains Road Line.....	13,598.25
"Total cost for Lessee's expenses for Superintendence, etc., pursuant to the contract paid or accrued prior to March 19th, 1913.....		$271,965.01

and

"The cost of

"(4) Superintendence, etc., in and about the Equipment for the specified portions, or lines, of the Railroad is as follows:

"(I) Seventh Avenue-Lexington Avenue Line:
(a) Seventh Avenue Branch.....$ 7,207.20
(b) Lexington Avenue Branch..... 23,284.80
"(II) Eastern Parkway Line..... 8,870.40
"(III) Steinway Tunnel Line..... 10,533.60
"(IV) White Plains Road Line..... 5,544.00

"Total cost of superintendence, etc., pursuant to the contract, paid or accrued prior to March 19, 1913 ..... $55,440.00

"The reason for such objections are that such items so (in pencil) by the Commission deemed determined are excessive, unreasonable and improper and in excess of the amounts that should properly be allowed.

"Dated November 18, 1913.

(In pencil) GEORGE S. COLEMAN,
"Counsel to the Public Service Commission for the First District, No. 154 Nassau Street, New York City, N. Y."

By Mr. Moss:

Q. The paper dated July 31, is a memorandum for Mr. Coleman, signed by Mr. Rogers, on which is written with your own hand, certain memorandum. It is Exhibit No. 1 of March 2. Did you read this memorandum before you made that notation on it? A. Oh, I must have, yes.

Q. Did you read this clause in it: "a. General Superintendence. On this item, $125,000 has actually been paid, and $25,000 is held in reserve to be distributed out of the general services of the engineering and operating staff." Did you read that? A. Oh, I have no doubt.

Q. Did you know $125,000 was allowed out of a total of $1,532,000? A. No; I don't know what was allowed.

Q. Did you know any item of $125,000 was allowed? A. No, I don't know anything about what was done after that, after I sent those —

Q. Now, this statement "on this item $125,000 has actually been paid." What inquiry did you make about that statement? A. I was not interested in that. I don't know. If Mr. Rogers took it up, he probably explained it for the benefit of Mr. Turner.

Q. Did you know to whom this $125,000 had actually been paid? A. No.

Q. Did you know for whom $25,000 was held in reserve? A. No, I did not, I have no recollection.

Q. Have you any information of either of those propositions? A. Personally I don't recall any.

Q. Did you make any inquiry of any of those propositions? A. I don't remember making any inquiry, anything except the legal expenses, although I have no doubt Mr. Rogers explained to me about these other matters. That was more for the benefit of Mr. Turner, who was interested in the items; not a question of legality.

Mr. Chairman, I would like to make a statement.

Chairman Thompson.— You may.

Mr. Coleman.— Because so much publicity has been given to this matter within the last week or ten days, I think it is only fair I should have a chance.

Chairman Thompson.— That is fair, and you may have pour opportunity. The Chair here has pursued you officially. That is not personal, that is official. Under those circumstances, I want you to understand we all have the fullest and freest right to explain, and been recorded on the record.

Mr. Coleman.— I feel it is due, to myself at least, and I think perhaps to the Commission, that some things should be stated. In the first place, you would gather — one would gather from the public press, that there has been an attempt to conceal something in the fact — because of the fact that I failed to recall certain alleged interviews had with me in connection with the Admiral Company case. Now it had been testified, for example, that there were a number of conferences, and parties were present, and that certain subjects were discussed. I said I had no recollection of

any of those conferences, that what I was interested in was the point of having every legal question raised that could be raised before the court. After that testimony, and after the statements had been made, following my testimony, I asked Mr. Harkness what his recollection of the matter was and he told me I am at liberty to state for him there was but one interview or conference in my room between himself, Mr. Marshall or Mr. Hays, or Mr. Wolf, and there were only three or four conferences or interviews on the subject at all, and they were all held with himself, and I was not present, so that it comes down to the fact there was but one interview I was present at, which I did not recall, and it explains why I could not recall the fact that there were a half-a-dozen. That is one thing. So I am anxious to have that appear on the record as I would naturally feel very keenly any imputation that I was trying to conceal. I have been a member of this bar and in active practice for over thirty years, and twenty-four years I have spent in the public service — sixteen in the Corporation Counsel and eight in the Public Service Commission — and I have been in court hundreds of times, and I want to say I have never knowingly suppressed a statement of facts, suppressed a fact, or made a mistatement of the law in any action or proceeding, and I am sensitive, therefore, to my reputation as a member of the bar. So much as to the question of good faith.

The question of the importance of this litigation was also brought up, and apparently from the newspapers I have been made to say that I did not regard the Admiral Realty suit as important — of much importance — but I was interested in the method in which it was raised. Now, I have not seen the record, but what I intended to say and meant to say and would say now, is I was very greatly interested in the questions of law, but I did not care how presented, whether by an agreed statement of facts, or an injunction suit, and then demurring to it, or in any other way. I was very much interested in the legal questions.

Now, as to the way these things were handled in our office. It is remembered that it is not only rapid transit work going on there, but a thousand other things, and my function is chiefly advisory. I have a fine staff of assistants, as far as the rapid transit is concerned, and rely entirely upon Mr. Harkness, and if he ever has

any question he wants to confer with me about, that we confer together, but he does not need any suggestion. He has slept with that subject. I have other assistants with other particular duties. I am there to confer at all times with any of my assistants, and others from outside. What I regard as the important thing were the questions of law; and when I was asked if I did not regard that as the most important case I had, I hesitated a moment, and I said I think it was financially. And the reason I said that was this: The very first year down there the question came up of the 80-cent gas case, which everybody was interested in. It had been started the year before, and my predecessor, Judge Blackmar, had intervened, and they had special counsel, Mr. Whitney, Edwin D. Whitney, and when I came in I continued his retainer and I was associated with him in the preparation of the brief, in the Supreme Court of the United States, and the Supreme Court of the United States decided that case in such a way that the citizens of New York got back about twelve million that had been paid, and that reduction had been retained since, and I recall that important case because it has perhaps been cited as much as any case in the last ten years or more, as much as any case I have ever seen cited, as the authority on the points decided. I regard that as important, regarding points of law. Either the first or the second year I was in office a case was brought, known as Gubner v. McClellan, and in that case about ten or twelve points were raised to upset the whole Public Service Commissions Law, Constitutional questions, legal questions, and that I had to take care of and argue, and it was sustained in the Appellate Division, so that settlement, and that as important to the Commission at least, and perhaps to the State, because if those grounds had been upheld there would have been no Public Service Commissions Law. Some of you perhaps don't care about that. But the State was interested.

The last question — these are merely illustrative — there have been many important questions. The last question, and most recent, was what they know as the Alien Labor case. That was very vital to the City and very vital to the State of New York, because it involved the question of the Constitution of the State, of the United States, and Treaties with the foreign countries, and for the first time in the Supreme Court of the United States it has been

held, maintained, that the State has a right to select its own employees in matters where the State or municipality is concerned and interested. I regard that as important in questions of law.

But I still regard the litigation we have been considering here as perhaps the one that involved the most in financial interest to the City of New York, and therefore, perhaps to our Commission, as it affected — looked a long way ahead, and into the future development of the State. It is not merely the money to the City, but the advantages to the citizens in the years to come. I feel as though I had been misunderstood by the reporters, to some extent, because these are somewhat technical questions, but I want the Senate, the Chairman, the Committee to know, and I want the community to know that my career here in the City has been practically an open book, and I have to face corporations all the time, except the six years in private practice, when I always made it my practice to treat everybody in the spirit of fairness, and play no favorites. If we cannot agree with our adversaries, let the court settle it. I am not naturally a suspicious person. I have always fought my cases thoroughly, and I am willing at any time to show any record or file in our office, or any determination that has been made, and take the full responsibility of my own advice. Those three things I want. I regarded those cases as important. There was no desire to conceal anything, and that the necessary organization of a large office, the work that has gone through our office the last eight years, employs and involves a subdivision and specialization of labor which is the only way you can carry on the work of that kind, of an office for that kind of a Commission. I am working for the interest of the Commission and the State, not myself.

Chairman Thompson.— Now, the question of entering into public defense of the Public Service Commission is not a real personal statement, you know.

Mr. Coleman.— I make that for myself. These newspaper articles go all over the country, and hit friends of mine.

Chairman Thompson.— If you give too long a statement it would not go very far over the country.

Mr. Moss.— I am glad he made his statement.

Mr. Coleman.— I want it for the record, because your record is a State document, and copies of that record will be distributed, and for my own sake, as well as my family, and friends, I want to be correctly understood. If I make an error of law, I will take my punishment.

Mr. Moss.— I move a copy of that statement be given to Mr. Coleman.

Chairman Thompson.— I will send you a printed copy of the record when we get it printed.

Mr. Coleman.— Is that all?

Chairman Thompson.— I am not in sympathy with you, if you try to give the Public Service Commission any credit for the 80-cent gas case, the United States Supreme Court. I don't think they are entitled to it.

Mr. Coleman.— They were a party to it. Mr. Whitney —

Chairman Thompson.— The Legislature was fixing gas at eighty cents, but the Public Service Commission never yet since has been able to get eighty-cent gas rates; have been talking about it seven years.

Mr. Coleman.— Eighty cents ever since.

Chairman Thompson.— Eighty-five, ninety and ninety-five; keep talking about it.

Mr. Coleman.— Mr. Chairman, it has been eighty cents in that Consolidated Gas Company —

Chairman Thompson.— But the Public Service Commission did not establish that rate. That was established by the Legislature.

Mr. Coleman.— They endeavored to sustain the law on the face of that enormous case, and were successful with the others.

Chairman Thompson.— That, I think, showed the Legislature passed a good law. Another thing: I am in sympathy with you. You say these people slept with these cases? I agree the cases have slept, and the rest of you, too.

We will suspend until tomorrow morning at 11 o'clock.

(Whereupon at 5:07 o'clock P. M. the Committee adjourned to Friday, March 3, 1916, at 11 o'clock A. M.)

MARCH 3, 1916

NEW YORK COUNTY LAWYERS' ASSOCIATION BOARD ROOM, 165 BROADWAY, NEW YORK CITY.

The Committee met pursuant to adjournment.

Senator Towner presiding.

Senator Towner. — The Committee will come to order.

Quorum present.

TURNER, DANIELL, being recalled for further examination testified as follows:

Examination by Mr. Shuster:

Q. Mr. Turner, have you prepared and brought with you the statements of the amounts expended and included in the tentative determination, quarterly determinations, which were referred to yesterday? A. I have.

Q. Will you let me see them please? A. There they are.

(Witness hands paper to counsel.)

Mr. Shuster.— The paper produced by the witness I will read into the record: "General Summaries, totals by determinations.

Cost of Construction: Prior to March 19, 1913, expenditures by City, $8,570,064.91; Expenditures by lessee $284,289.25."

Q. That is the Interborough? A. Yes, sir.

"Total $8,543,354.36. March 19, 1913 to June 30, 1913."

Q. That is the first quarterly determination? A. Yes, sir.

Q. And is the determination now held up opening distribution by the Commission? A. Yes, sir.

"Expenditures by City, $2,820,515.44; Expenditures by lessee $4,832.92; total $2,825,348.36. July 1, 1913 to September 30, 1913, $3,284,120.97, expenditures by City; Expenditures by lessee, $446,576.02, total $3,730,696.99. October 1, 1913 to December 31, 1913, expenditures by City, $3,134,397.38; Expenditures by lessee, $331,504.37; total, $3,465,901.75. January 1, 1914 to March 31, 1914, $2,375,707.59, expenditure by City; expenditures by lessee, $641,004.39; total $3,016,711.98. April 1, 1914 to June 30, 1914, $3,962,745.16, expenditures by City; Expenditures by lessee, $3,876,498.28; total $7,839,243.44. Total cost of construction for the prior determination and five quarterly determinations ending June 30, 1914, expended by the City, $24,147,551.45; expended by the lessee, $5,584,705.43.

"Cost of equipment, prior to March 19, 1913, expenditures by the lessee, $55,440. March 19, 1913, to June 30, 1913, expenditures by lessee, $942.48. July 1, 1913 to September 30, 1913, expenditures by lessee, $35,041.76. October 1, 1913 to December 31, 1913, expenditures by lessee, $14,638.70. January 1, 1914 to March 31, 1914, expenditures by lessee, $31,054.26. April 1, 1914 to June 30, 1914, expenditures by lessee, $59,402.64. Total cost of equipment, expenditures by lessee covering the period, $196,519.84. Total cost of railroad which includes the cost of construction and equipment for the period ending June 30, 1914, by the City, $24,147,551.45; by the lessee, $5,781,225.27. Total cost of construction as at December 31, 1915, expended by the City, $42,870,000; expenditures by the lessee, $26,995,397.04. For the same period, the cost of equipment expended by the the lessee, $1,165,206.42, making a grand total of all expenditures under the contract to December 31, 1915, of $71,030,603.46, of which total the lessee has expended a total of $28,160,603.46, and the City has expended, $42,870,000."

Mr. Shuster.— I offer the statement referred to in evidence.

Same was received and marked Exhibit I of this date, March 3, 1916.

Q. Mr. Turner, these determinations, with the exception of the prior determination and the quarterly determination are simply tentative? A. Yes, sir. That is, these figures are not necessarily, final figures.

Q. But under the contract determinations will have to be made in due course and become final? A. Yes.

Q. Mr. Turner, are these quarterly determinations, these tentative determinations, drawn to the notice of the Comptroller of the City of New York or any other city officials, except the Public Service Commission? A. No, sir.

Q. Was the prior determination brought to the attention of any of the city officials, other than the Public Service Commission? A. The prior determination after its issuance by the chief engineer was brought to the attention of the Comptroller, the Corporation Counsel and Mr. McAneny, Chairman of the Transit Committee, and informally I myself sent copies to other members.

Q. In serving the prior determination upon the city officials named, were they apprised of the requirements that appeal should be taken within thirty days thereafter? A. The Comptroller and Corporation Counsel were advised, as I recollect.

Q. Was any appeal taken or any recommendation made by any of the city officials in reference thereto? A. Not to my knowledge.

Q. You received no communication whatsoever from them? A. No, sir, not that I recall.

By Mr. Moss:

Q. How long have you been with the Public Service Commission? A. Since it come into existence, 1907.

Q. Are you the main advisor of the chief engineer? A. No, sir, I am one of Mr. Craven's principal advisors? Mr. Ridgeway is the main advisor.

Q. In the matters we were inquiring about yesterday aren't you the one upon whom Mr. Craven has particularly relied? A. Yes, sir, I should think so.

Q. I notice a good many of the memorana are made by you?

A. I am in general charge of the bureau that are dealing with these particular matters Mr. Craven has testified about.

Q. How long have you been in practice in New York as an engineer? A. Since early in 1901, when the first subway work began. I came on the subway work with the old Rapid Transit Board at that time.

Q. Were you ever connected with any of the railroads or companies which were operating subways or building subways? A. No, sir, except that incidentally as my work for the Rapid Transit Commission while they were constructing the first subway, I did certain work for the Interborough as looking out for station construction.

Q. When you were at work for the Interborough who were you employed by? A. By the City.

Q. Who were you paid by? A. Paid by the City and paid partially by the company I think as well.

Q. Was that the Rapid Transit Subway Construction Company? A. Yes.

Q. You were assistant engineer in charge of stations, weren't you? A. Yes, sir.

Q. And you passed directly from that into the employ of the Public Service Commission? A. I was with the — no, I passed from the old Rapid Transit Board into the Public Service Commission. My duties in that connection ceased with the construction of the first subway and that was way back in 1904 some time.

Mr. Moss.— There are some other questions, but I will reserve them until other witnesses have been examined.

CRAVEN, ALFRED, being recalled for further examination, testified as follows:

By Mr. Moss:

Q. Mr. Craven, we were examining yesterday concerning items of cost which you checked up and allowed, you remember? A. Yes, sir.

Q. I suppose you have read the contract between the City of

New York and the Interborough Rapid Transit Company, Contract Number 3? A. I have.

Q. I refer to page 41 of that contract, the printed copy, Article 26: "No payment, credit, compensation or concession of whatsoever character having in any way to do with the cost of construction or the cost of equipment shall be determined to be part of the cost of construction or the cost of equipment unless the lessee upon making such payment, credit, compensation or concession shall forwith file with the Commission, a duplicate voucher, credit slip or other original evidence thereof. The Commission may from time to time, by resolution evidenced by entry in its minutes, relieve the lessee from the obligation to file such vouchers, credit slips or other original evidences to such extent as it may deem advisable;" in the items which we were questioning you about yesterday were there any vouchers whatever produced? A. Only at the company's office.

Q. Were there any vouchers produced to you? A. No, sir.

Q. We will take the $125,000, which was a part of the general item of $1,532,000 which you said you allowed as a sort of compromise figures on the whole amount? A. Yes, sir.

Q. What vouchers were produced to you for $125,000? A. There were none.

Q. What vouchers was produced to you for the allowance of $50,000 to Mr. Rodgers? A. There was none produced to me, and I do not know whether my accountant found that voucher or not.

Q. What evidence had you as to the particular service of $50,000 which you were allowing to Mr. Rodgers? A. Only from the advice of our counsel who handled that matter.

Q. I read from article 21 of the same contract, at page 39 of the printed pamphlet: "Inasmuch as the City's return from its investment in the railroad and its exercise of its right to take over the railroad as provided in the lease will be affected by the amount of the lessee's expenditures on account of its contribution toward the cost of construction of the railroad and the cost of equipping the railroad and of maintaining and operating the railroad and the existing railroads, the lessee shall strictly comply with the provisions hereof for assuring to the Commission super-

vision by it of all operations of the lessee. The lessee shall, therefore, in addition to providing facilities for inspection as hereinafter provided, provide the Commission with all facilities necessary or convenient to afford the Commission full and complete supervision of all operations of the Lessee in or about the enterprise of contributing to the cost of construction of the railroad and of equipping the railroad and of maintaining and operating the railroad and the existing railroads. The lessee and any construction or supply company controlled by the lessee or by any company directly or indirectly controlling the lessee or affiliated with the lessee, shall keep suitable and proper books, records and memoranda of all operations with contractors, bankers, or persons furnishing labor, material, money or supplies and all contracts directly or indirectly affecting the lessee's contribution toward the cost of construction of the railroad or the cost of equipment and directly or indirectly affecting the maintenance or operation of the railroad and the existing railroads, showing in detail such cost to the lessee, or to any such construction company, including any additions constructed or provided from time to time, and shall afford access to and permit the examination, use and production of any such books, records, memoranda or contracts to the extent that the same have to do therewith."

Mr. Turner.— In reference to this matter that you spoke to me about, I merely want to say that my acting in that capacity —

Mr. Moss.— Let me finish with Mr. Craven first.

Q. Now, you see the importance and the very special and particular provisions in this contract for most carefully scrutinizing all the items of cost, do you? A. I do.

Q. You cannot add any statement of facts to what you have in answer to my question? A. Only that our records, as far as I am aware, have been at our disposal and examined by the counsel.

Q. The books have been at your disposal? A. Yes, sir.

Q. And if you had asked for a voucher you would have received it? A. Yes, sir.

Q. And you would have seen the service for which they wanted $125,000 there? A. We have no record voucher for that $125,000.

By Mr. Shuster:

Q. Did the Public Service Commission by a resolution entered upon its minutes relieve the Interborough Company from filing, presenting and filing, such vouchers originally of expenditures as provided by the contract? A. Not to my knowledge. They may have done so.

Q. Should you have expected anything less than the contract provided for in the way of evidence? A. I think that we kept within the contract in following up those accounts.

Q. Did the counsel or assistant counsel to the Commission so advise you? A. I cannot recall any such advice. They may have. That is a long time ago, and I do not recall whether the Commission ever took any official action on the line of that, I do not know.

Q. And do not know now that they ever took any action? A. No, sir.

Q. Do you know anyone who does know that? A. No, sir. Possibly it is on the records, if such action was taken.

Q. Did you ever discuss that matter with anybody? A. No, sir.

Q. You were familiar with the provision of the contract Mr. Moss just read to you? A. Yes, sir, in a general way.

Q. You never made any close study of the provisions of the contract, the particular provisions? A. No, sir. In making my determinations I was acting under the approval and advice of our counsel.

Q. What advice did your counsel give you in regard to this matter? A. I do not recall any particular advice in regard to that specific requirement.

Q. The how could you act under his advice, if you received none? O. I say in that specific requirement of the contract, as to the filing of those vouchers.

By Mr. Moss:

Q. Mr. Craven, counsel said yesterday, Mr. Coleman said yesterday the only thing he was asked about and the only thing he gave any advice about was the reasonableness of the charge, saying in substance it was about what other corporations would pay;

didn't you ask him whether the charges were legal, as well as reasonable? A. No, sir.

Q. Why didn't you? A. It did not occur to me to do so.

Q. You demanded from counsel that he advise you if there was any question of legality under the contract? A. If it had occurred to me at the time, or my attention was specifically called to that, I would have probably asked for it.

Q. Weren't you depending upon him to keep you within the legal lines of the contract? A. I was constantly in touch with Mr. Harkness in all the dealings.

Q. It would not have occurred if you had asked specifically whether these things were legal, would it? A. I do not recall any action, or any advice from counsel in reference to the matter.

COLEMAN, GEORGE, being recalled for further examination, testified as follows:

By Mr. Moss:

Q. Mr. Coleman, you heard the questions to Mr. Craven, didn't you? A. Yes, sir.

Q. And the reading from the contract, you heard those two clauses read? A. Yes, sir.

Q. Now, with reference to this item of $125,000, was any voucher produced? A. I do not know that there was any voucher. It was not a matter I had to consider. It was a question of allowance, as I understand it.

Q. Was any voucher produced for that $125,000 you allowed? A. I do not know anything about it. I assume from reading, what you read, those provisions of the contract refer to damages after the dual contract was signed, and from that time on, March 19, 1913.

Q. This was allowed by you after the dual contract was signed, wasn't it? A. Well, I mean in reference to vouchers. My present view would be that those provisions were where duplicate vouchers were required to cover the period from March 19th on. I cannot recall about those matters.

Q. What do you say about the spirit of this whole chapter, chapter 5, entitled "Supervision, inspection and determination of

cost," don't you think the spirit of that whole chapter calls for the examination of the items by voucher and by entries in the books, and so on? A. You are as good a judge of the spirit as anyone, and I don't give opinions on spirits. I am willing to give an opinion when necessary and proper.

By Mr. Shuster:

Q. Mr. Coleman, in reference to Mr. Moss's question with regard to the provisions regarding vouchers to be filed, you say that you assumed that that matter applied to expenditures after the prior determination? A. No, sir, after — I don't charge my mind with those things. Unless some concrete question is presented, and my associate was in when those terms were drawn, and the counsel from the other companies can tell you. I do not propose to answer questions unless put to me by the heads of the departments or Commission, where I have to make a personal study of them.

Q. You do not claim to have any familiarity with the contracts? A. Not with the details of them.

Q. Have you with the provisions of the contract? A. The general provisions, such as I think necessary, and I take these things up as they come along, and I do not burden my mind with them any more than a dictionary.

Q. Is there anything more important that comes within the powers and duty of the Public Service Commission than is contained in this subway contract? A. I think there are a great many important things that come before the Commission. I said yesterday that I regarded that as the most imporant financial proposition in one concrete contract, but there is no question that is not important. The question about rates and questions about service and questions about franchises and capitalization and bonds and grade crossing are all important, and every time a question comes up I go to the statute and the contracts, and never try to burden my memory any more than with the provisions of the code, but never pass upon a question without going to the contract, and memoranda and correspondence and seeing everything.

By Mr. Moss:

Q. Let me read you article 25, if you think 26 does not techni-

cally cover: "The Commission may from time to time adopt regulations, which shall be evidenced by entries in its minutes, which the lessee shall strictly comply with, as to the form of all vouchers and payrolls having to do with the enterprise of contributing toward the cost of construction of the railroad and of equipping the railroad and of maintaining and operating the railroad and the existing railroads, to the end that the cost data relating to various divisions of the enterprise of contributing toward the cost of construction of the railroad and of equipping the railroad and of maintaining and operating the railroad and the existing railroads can, at all times, be promptly and accurately determined and the property identified;" I spoke about the spirit of this chapter; is there anything in that which would suggest to you as the legal guardian of the interests confided to your care, in your opinion, that no allowances shall be made except on the production of bills showing what the allowance was for and who received the money, and so forth? A. I think it speaks for itself.

By Mr. Smith:

Q. Mr. Coleman, on two occasions during your examination you said you only gave opinions to the Commission? A. No, I said to the Commission, to a Commissioner or to a head of a department or bureau.

Q. Do you deny your obligation as a public official to give to this Legislative Committee when requested an opinion on the entire or any provision of those contracts? A. I think it is within my right to reserve my opinion for those to whom officially related.

Q. Do you deny your obligation to this Legislative Committee to give an opinion on the entire or any portion of that contract when requested? A. If you want my answer, I would say yes, I deny my obligation to give this Committee my opinion.

Q. Do you refuse to do so? A. Put your question about a particular matter.

Q. Do you refuse to give your opinion on the entire or any portion of contract number 3 when requested by this Legislative Committee? A. When the time comes I will answer that. If I am asked for a concrete question I will look it up, and I won't give any offhand opinions.

By Mr. Moss:

Q. I ask you the question whether the chapter I referred to required the production of vouchers to you and you refused to answer? A. It is absurd to ask whether certain written things are in the spirit or not. My opinion on that subject is of no value to you or anybody, and I decline to say what my view of the spirit of that proposition is.

Q. You think it is so plain every one can understand it, do you? A. Yes, sir.

Mr. Moss.— I think that meets our requirements.

Mr. Smith.— I think so.

By Mr. Shuster:

Q. Did you think so when you examined the memorandum Mr. Rodgers submitted to you? A. I always think so. I have testified about my interview with Mr. Rodgers.

By Mr. Smith:

Q. The contracts provide that the counsel for the Commission shall do certain things and have certain obligations; you realize that, I presume? A. Yes, sir.

Q. Who is the counsel for the Commission? A. I am the chief counsel.

Q. Who is the counsel for the Commission, according to the wording of the contract, counsel? A. Where they use the word counsel in the singular person, as to a person, I am, and as the Public Service Commission Act itself describes, I am the counsel, but I regard all my assistants as counsel to the Commission and counsel who are authorized to appear for the Commission either before the Commission on hearing or in court under my supervision, and anything they do that I approve is done by me. If they do it in advance, without my knowledge, and all approve it, either expressly or by implication again I am responsible, and it does not mean whenever the word counsel is used that I am the party intended. It means the Legal Department of which I am the head.

Q. You have the final responsibility as counsel under the con-

tract, do you not? A. Undoubtedly. If any of my associates make a mistake and I discover it, it is my responsibility.

Mr. Turner.— I want to say that my action in the dual capacity at that time was by resolution of the Rapid Transit Board.

RODGERS, RICHARD REED, being first duly sworn, testified as follows:

Examination by Mr. Shuster:

Q. Mr. Rodgers, you are an attorney and counsellor-at-law? A. Yes, sir.

Q. And you are the counsel in chief of the Interborough Rapid Transit Company? A. I am the general counsel, yes.

Q. Do you recall a time when you submitted to Mr. Coleman, counsel to the Commission, memorandum I have proporting to be a statement of the expenditures of the Interborough made prior to March 19, 1913? A. Yes.

Q. Do you recall when that was? A. I think it was first about the 25th day of July, 1913. I cannot be sure as to the precise date, but about that time.

Q. Will you state what you did and what occurred on that date? A. The contract of March 19, 1913, provided that within six months from the time the contract had been signed that the matter of the precontract expenses should be adjusted between the City and the Interborough Company. The matter was not taken up prior to that time because I personally was very busy with some other court matters, and went away on a vacation. About the latter part of June, immediately upon my return, I took the matter up with Mr. Coleman and with Mr. Turner, and Mr. Harkness I believe was present at one or two conferences, and not at all, and Mr. Semple was present at some, and not all.

Q. Now, Mr. Rodgers, were you asked by the engineer of the Public Service Commission to furnish the information with regard to the expenditures of the Interborough Company? A. I cannot recall now who suggested these quantities. My attention was called to the fact I think by some one probably in the counsel's office, and I would not be sure as to that, that the Brooklyn Rapid

Transit had adjusted their precontract expenses and they were prepared to take the matter up with us. I do not know how the conference originated, but it was immaterial, because if it had not been brought up on one side it would have been on the other side.

Q. Do you recall Mr. Pegram, your chief engineer, was requested in writing by the chief engineer of the Commission to furnish the data about May 8th, 1913? A. No, sir, I don't remember that.

Q. You don't remember anything about that? A. No, sir, I don't.

Q. That is the fact? A. It may be. I have no doubt it is.

Mr. Shuster.— I will read into the record a letter of May 8th, 1913. "Redetermination of the cost of construction and equipment paid or allowed prior to the date of contract Number 3. George H. Pegram, Esq., Chief Engineer, I. R. T. Co., 165 Broadway, New York. Dear Sir: I am now making the above determination as to same under article 29 of the contract. Will you please submit to me as soon as practicable any statement which you may wish to furnish with respect to this department which will aid me in preparing same? Very truly yours, Chief Engineer." I am reading from a copy, and the original is doubtless in the files of your engineer.

Q. That was never brought to your attention? A. I don't remember seeing such a letter, but if such a letter was received it would naturally be referred to the auditor of the Interborough Company to prepare the statements, and Mr. Gaynor brought me a very detailed statement of the expenditures made.

Q. Did you file that or a copy of the auditor's statement with the chief engineer? A. I did not file it with the chief engineer. I left them with some of the people who attended the conference on behalf of the City, whether Mr. Coleman or Mr. Turner I cannot recall now.

Q. You left that statement with someone representing the City or the Commission? A. Yes, sir.

Q. You do not recall with whom? A. No, sir.

Q. And what was the date when you left that statement with

the Commission's representative? A. It must have been some time between the 25th and 31st. I had these statements there, and it was stated at the time that an investigation would be made, a detailed investigation would be made of the books of the company to verify these statements.

Q. To whom did you make that statement? A. It was stated by Mr. Coleman and Mr. Turner, and that was an understanding that it would be done.

Q. And was it done? A. I am advised that it was done.

Q. With regard to all of these items? A. Yes, in regard to all the items, so far as I know.

Q. Did that detailed statement that you submitted to Mr. Coleman or Mr. Turner include the specific items covering the totals in the prior determination; have you that statement here? A. I understand it has been introduced in evidence, and therefore I did not bring copies of them here. Mr. Gaynor, our auditor, told me that they had been introduced in evidence.

Q. Mr. Gaynor introduced what purported to be copies of what you had? A. Those were statements, and very detailed statements, and one was a detailed statement covering the actual localized expenditures on the subway proper, and one was a long statement covering localized statements upon the extensions here, and the third covering similiar expenditures on the Manhattan elevated line.

Q. I show you Exhibit 1 of March 2nd, and I ask you if that is the memorandum which you submitted at the conference you have been testifying about? A. That is one of the memoranda which was submitted on that occasion, but that was accompanied by this further detailed statement showing the details of this item, engineering and superintendence, $129,569.09, as I recall.

Q. How about the other items here, are there details on those? A. No, sir, there were not details on those.

Q. Will you glance down over the end of that document, and you find the amount of $1,532,000? A. Yes, sir.

Q. Did you have the details before Mr. Coleman and Mr. Turner or any of the Commission's representatives on that aggregate item? A. No.

Q. Did you have any vouchers in regard to that? A. No, sir.

Q. Are there any vouchers in regard to that aggregate item? A. Yes, sir, the vouchers in the auditor's office covering the whole amount of it, I suppose.

Q. Were they tendered to the Commission or any of its representatives in connection with this statement? A. No, sir, those vouchers covered a statement, and they were simply receipts of the general officers of the company for four years for salaries for that time.

Q. Do you wish to make any explanation of that item of $1,532,000 at this time? A. When these contracts were in course of preparation, a question came up as to these precontract expenditures.

Q. When was this you are testifying to? A. I am talking of the period of negotiations leading up to the formation of the contract of March 19, 1913, and those were negotiations which were conducted largely between Mr. Shonts and myself representing the Interborough Company and between various officials, members of the Public Service Commission and members of the Board of Estimate and Apportionment with the counsel, Mr. Harkness, and others representing them.

Q. You are talking about the time surrounding the submission of this —? A. No, sir, I am going back to the beginning. I would like to give you, if you wish to have it.

Q. We do not care to go back into the negotiations. A. At that time the question came up.

Q. If you care to state the conversations as they occurred at the conferences we would be glad to have you, in respect to this statement or these various statements? A. I will say at the time the contract was being entered into the provision was inserted relating to expenditures made prior to the contract for the purpose of meeting a portion of the amount of the expenditures of the two companies, the Interborough and the Brooklyn Rapid Transit Company, in connection with the work leading up to the formation of the contract of March 19, 1913. The next time the matter came before the Public Service Commissioners was immediately prior to the time the contract was signed. At that time it became important to ascertain what would be the probable total cost to the City of the construction of the subways. There was a limited

amount of debt margin available to cover the indebtedness of the City, and calculations were made by the Engineering Department of the City in which they estimated the total cost to the City of constructing this subway at a certain amount. I took exception to those figures, upon the ground the amount was insufficient, and in that connection I brought up to the attention of the Public Service Commissioners the fact that an allowance had to be made out of the 58 million dollars the net proceeds of that which we were to contribute for these precontractural expenditures. I did not have at that time any of the details of those expenditures before me.

Q. Had you any approximate idea of them? A. Yes, sir, they were estimated approximately for the purposes of that conference at one million dollars, and some objection was made to that, and the details were then, I think, taken. We estimated $150,000 ought to be added for extras and $87,000 added for excess interest and $468,000, that was the figure given by Mr. Gaynor, approximately, for preliminary engineering expenses, superintendence and administration, and $200,000 for legal expenses. After some discussion, I find from a memorandum which was made at the time by Mr. Shonts, as a result of that discussion. There was present Mr. Craven, as I recall, and Mr. McCall, Chairman, and I think Mr. Harkness was there, and I know I was there, and there may have been other Commissioners in his office. For merely an approximate purpose we finally settled upon $887,000 as covering these precontract expenditures or the part of the Interborough Company. That question being important at that time, in order that we could determine how much out of the available debt margin should be set aside by the Board of Estimate and Apportionment to cover the probable total cost of the City under this contract, it was accordingly done, as I have stated.

Q. And in the discussion, not for the purpose of establishing your right to it? A. No, sir, but assumed our right to it, in this way —

Q. To that aggregate amount that you have mentioned? A. It assumed our right to an approximate amount which was about equal to that, but it did not commit the City to the precise amount of it, and we did not have the figures there.

Q. And it did not relieve the engineer from making a deter-

mination in accordance with the contract? A. No, sir; that was not assumed, that that conference was for that purpose. It was quite important from the point of view of the Interborough Company and the bankers that there should be assigned to this contract a sufficient amount to cover the expenditures the City would have ultimately to make under the contract. The whole item in the engineer's estimate had been demanded, and I brought that up in connection with one or two other items, real estate and interest, as a proper part of our contribution of 58 million dollars under the contract, and that was recognized and we entered into a discussion of the probable amount which meant engineering, superintendence, legal and otherwise, and stated the probable amount of engineering, superintendence, at $468,000 and some data Mr. Gaynor handed me and estimated the legal at $200,000 and in that way arrived at a figure which was really added to the estimated cost to the City of this work, and with the result that the amount of debt margin set aside against this contract by the resolution of the Board of Estimate and Apportionment was correspondingly increased. That was the first time that this matter was taken up.

Q. That was how long before the contract was signed? A. That was immediately before the contract was signed, and I think it was on the day or the day before the resolution was passed by the Board of Estimate and Apportionment specifically appropriating some of the City's available debt margin to cover this contract and the Brooklyn Rapid Transit contract. Then, I will pass to the next conference, the conference in Mr. Coleman's office. When I went to see Mr. Coleman I had only what Mr. Gaynor had furnished me, and that consisted of these detailed statements here amounting to $129,659.09 with respect to the subway proper, to $26,657.58 with respect to the extensions proper and $173,022.36 with respect to the Manhattan expenditures proper. Mr. Gaynor at the same time had furnished me the memorandum, your Exhibit 1 of March 2nd, which showed certain expenditures already appearing by his books with reference to various items stated therein.

Q. Do we understand the Exhibit No. 1, known as the Rodges memorandum was prepared and furnished you by the Auditor of

the Interborough Company? A. Yes, sir. But that memorandum did not seem to be to me at all complete as covering all the proper expenditures to be made, and it included some expenditures which did not seem to me could be properly allowed as part of the contract. It was a statement of what the books already showed, and did not take into account other proper charges which would subsequently appear on the books.

Q. Will you tell us what you considered to be proper charges to be allowed the Interborough as precontractual items? A. I will first take up the items I have referred to which are localized expenditures in the engineering department which had been paid. There was an item of $5,201.07, which was actual damages which had been assessed against the Manhattan Company, and that was taken up and considered.

Q. Taken up by whom? A. By this conference — this conference had in Mr. Coleman's office. We then took up the question of the attorney's fees. I had, I think, at that time a statement of various attorney's fees which had been paid, and I remember there was a statement of the services which had been rendered to the Interborough Company by Mr. Nicoll's firm during the three years which ran considerably over $100,000 for the three years, a succession of bills, and some portion of that was charged against the subway, and I discussed that with Mr. Coleman, and I recall he took the position Mr. Nicoll had not attended any of the conferences relating to the actual execution of the contract and therefore it was questionable what portion of that bill could be properly allowed, and I invited his attention to one or two conferences which Mr. Nicoll had attended, and then to some general advice which he no doubt had given our executive officers, and we finally agreed to a total of nearly $125,000 covering his expenses during this period of time it would be proper to charge $12,500, and that was divided approximately $7,500 to the subway proper and $5,000 to extensions. There had been paid to Mr. Julian R. Davies, counsel for the Manhattan Company, $10,000, and I had been advised at that time that Judge Dillon had a bill for $5,000 for additional services. I mentioned those facts. Mr. Grout had been paid $17,500 and his original bill had been $25,000, $10,000 paid at the beginning and $15,000 presented by him later and compro-

mised at $7,500, and that was allowed, and my own fee was taken up.

Q. That was allowed by whom? A. Allowed at this conference. That was an allowance given on general legal expenses prior to this contract and the subject of my own fee was discussed, and that was passed, and that made a total of, I think, $80,000 of fees which were distributed between the subway proper and the extensions proper and of $15,000 which was localized against the Manhattan, being service of counsel for that company exclusively. Mr. Nicoll's allowance for $10,000 was then considered. Then we got into a discussion as to how these various allowances — next came to the question of General Superintendence, the item of $150,000, which was allowed there. I had before me then this statement of Mr. Gaynor that the salaries paid for the executive officers —

Q. Do you mean general superintence? A. Yes, sir, General Superintendence or Administration, $1,502,000 in Mr. Gaynor's figures. Then we discussed the proportion of time of the officers of the Company which had been devoted to these contracts and stated with respect to some of them they had not devoted a great deal of time and I stated with respect to Mr. Shonts he devoted the greater portion of it for three years to the contracts, and we, as a result of this discussion — I was requesting a larger allowance than $150,000 and they were rather taking the attitude that $150,000 would be right in line with an amount allowed the Brooklyn Rapid Transit, and we finally agreed upon that as a proper allowance for the Administration and Superintendence expenses prior to the contract. Having come to a preliminary understanding with respect to that, at a later conference, I think it was we took up the question of the distribution of the various allowances between the three works of public improvement, the subway proper and the extensions and the Manhattan Elevated, and suggestions were made on both sides as to how that should be divided with the result that Mr. Coleman wrote down this division of expenses upon a memorandum which I have before me, showing how the various items which had been provisionally agreed upon had been distributed between the three branches of work. Later on Mr. Coleman or Mr. Turner asked whether I would furnish a statement

showing which of the items which had been agreed upon would be found entered upon the books of the Company at that time, and I then dictated and sent to Mr. Coleman a memorandum which was introduced in evidence yesterday.

Q. Under date of July 31, 1913? A. Yes, sir. That was the object of that memorandum, as I understand it that it should be to some extent a guide for the accounting officers of the Commission in investigating the whole situation. After that, along in November, the Engineer made his formal allowance, that is, I understood it, after the investigation of the accounts had been made, and I was then advised that exceptions had been filed to the Engineer's determination upon behalf of the Commission. I thought if they were to file exceptions when the matter had been agreed upon and seemed to be a very fair adjustment from the point of view of the City, inasmuch as the allowances were less than to cover the proper allowances, that I should insist upon the part of the Interborough Company that the allowance as agreed to at this conference was inadequate and insufficient, and I did file exceptions at the same time as to the allowances being inadequate and insufficient, and the time to consider them was extended from time to time on both sides, until, I think, the early part of 1914 I was advised by a letter from Mr. Coleman's office that the exceptions had been withdrawn, and that left the agreement as to the precontractual expenses stand practically as the result of this conference, this series of conferences I had attended in July, and I then withdrew our own exceptions and the matter became final.

Q. Now, Mr. Rodgers, you are now, and were at the time of these conferences, familiar with the provisions in contract No. 3 under which you were then operating? A. I was much more familiar at that time than I am now, because I have not worked over that contract in the last three years much.

Q. Where within the provisions of this contract do you find any warrant for barter or dicker between the parties as to these expenditures, or any of the expenditures involved? A. I find it in that way, that in the course of the whole negotiations leading up to that contract with which I was entirely familiar, having been through them all, it was a very difficult thing to estimate a proper amount for the superintendence and administration charges of

these two companies, the Brooklyn Rapid Transit and the Interborough Company which would actually be a charge against our contribution under Contract No. 3 and against the Brooklyn Rapid Transit contribution.

Q. But the contract fixed the method? A. I don't think it was designed to fix a method in regard to the precontractual work. I did fix certain formulae which were applicable and would be effective as to continuing expenses after the construction work actually begun, but we were confronted at the outset with the difficulty of what expenses should be charged up against this contract. While the negotiations were going on and no expenditures had been made or vouchers prepared with a view of formulating a bill to cover the precontractual expenses, our position was the position taken by the City at the same time, a certain general allowance should be made to the City which would be some proportion of the time of the general officers of the Company which was devoted to the negotiations and to arranging for the execution of this contract. That was the attitude taken by the City officials, and they distributed the time of their officials and of their lawyers in such proportion as they thought fit to charge under this contract for the precontractual charges on behalf of the City, and we did precisely the same thing with respect to the Interborough Company.

Q. You have answered very greatly at length but you have not answered my question. A. The question is, where in that contract did I find warrant for the adjustment between the City officials and myself, representing the Interborough Company. I am trying to explain, I found it in the peculiar nature of the expenditures that grew out of the negotiations, and I had before me the purpose for which the clause had been inserted, and I understood the only way you could definitely arrive at that was by allocating to this work some time of the general officers of the company who have negotiated the contracts and contributed their services to the perliminary work leading up to the contract. That manifestly could not be answered by vouchers and it was a matter of judgment.

Q. Whose judgment was to be final on that? A. The engineer's judgment was to be final on that.

Q. Why did you go to the counsel of the Commission then, in-

stead of the engineer? A. I simply did because it seemed to me it was a question involving mixed matters of fact and law, and that was very proper to take it up at a conference where the Counsel and Engineering Department were both represented.

Q. Was your engineer present? A. No, sir, our engineer was not present.

Q. And yet it was the engineer of your company who was requested to furnish the information? A. That may be true, but I have before me an itemized statement of the expenditures which have been made by our Engineering Department.

Q. Did you consider that such approval as the contract calls for? A. I did.

Q. You considered an ex parte statement of that character the approval demanded in that provision of the contract? A. Yes, sir, with reference to the precontractual expenses, and for the reason the contract expressly provided for the identification of such expenditures and for the verifying, and the counsel should have access to our books, and they were given to them, and the memorandum which I dictated and left with Mr. Coleman, dated 31st of July, 1913, was for the purpose of furnishing a guide to some extent as to certain of those expenditures.

Q. What particular value would an inspection of your books be if, as you say, it was next to impossible to furnish a proper voucher under the circumstances? A. It was next to impossible, therefore it seemed to me the question of adjusting these administration expenses was a matter to be arrived at by agreement.

Q. What good would it do to inspect your books? A. If they wished to ascertain as to the data of the $1,225,000 covering the salaries of Executive officers, and if it had been paid, they could do so. They knew the amount we had paid during that period of time for our principal administrative officers was an amount very much in excess of what was actually allowed. The point we had to determine was not so much what had been actually paid, to administrative officers, in the past, but as to the proportion of the time of those administrative officers which would be properly chargeable against the City as a part of superintendence or administration prior to the contract, and as that was his reason it seemed to me entirely appropriate for the City Engineer upon the

one side with his assistant, and for myself representing the Company on the other side, to agree upon the amount which would represent the proportionate time of the officers and be a proper charge against the contract.

Q. What part of construction was there in expenditures made prior to the contract? A. There was no construction of course, prior to the contract.

Q. But this is all determined by construction cost, is it not? A. Yes, sir, but the cost of construction is defined to be a lot of items such as insurance, superintendence, damages and legal expenses which took place prior to actual construction. I heard the point you raised when Mr. Coleman was on the stand, and it seems to me entirely clear that what the contract intended there was that expenditures in and about construction, including these preliminary expenditures when no actual construction was in progress, should be a proper charge against the cost of the property. If that conclusion of law is not correct, that clause is meaningless in the contract, and that was an issue Mr. Coleman stated, and the practical construction placed upon the contract by both sides and never questioned.

Q. Had there been no negotiations between the City and your Company, this item of $50,000 to you would not have been an item that would have been an obligation of the Company at all? A. No, sir.

Q. And it was not a definite obligation on March 19th, 1913, was it, as to the Company? A. I think so, yes, sir.

Q. The Company had paid you that $50,000? A. No, sir, they had not paid me at that time, but the work had all been done.

Q. You devoted practically all of your time to those negotiations, did you? A. No, sir, but it seems to me that during the four years that I was connected with the Company prior to this contract I must have devoted the larger portion of it and probably three-fourths of it.

Q. You were under a general retainer from the Company? A. Yes, sir.

Q. And that general retainer contemplated you would do whatever work was necessary for the benefit of the company, did it not?

A. There is nothing in the terms of the general retainer which covers anything specific.

Q. Fairly that was the expectation? A. I think that general retainer was intended to cover all the normal matters. There was no definite contract at the time I came over here as to precisely what it should cover.

Q. You do not mean to say that by reason of those negotiations you would have had a legal claim against your company for anything beyond your general retainer, would you, without the Company's consent? A. I should have thought so, Mr. Shuster. I do not know that lawyers, as a rule, when handling an important piece of work of this sort enter into a definite contract what they shall be paid for it.

Q. Was there any arrangement between you and the Company as to special compensation for these services at the time you entered upon these negotiations? A. Not in the beginning, no, sir.

Q. Was there at any time until after the conference? A. I think the matter first came up during the time these clauses were being put in the contract.

Q. With whom? A. Discussed in a general way.

Q. What officer of your company did you have any understanding with that you were to receive $50,000 as compensation for these special services that were in contemplation of the parties in negotiating the contract? A. I do not remember as I had any definite agreement. The matter was discussed in a general way at the time the clauses were put in there.

Q. You could not have recovered as a legal obligation against your company any part of that $50,000? A. I don't know whether I could or not. It seems to me I had a very just ground for compensation against the company.

Q. Was there any reason why your Board specially retained you? A. No, sir.

Q. For those services? A. No, sir. There was nothing in my retainer, so far as I know, that specified precisely what it was to cover.

Q. Had the negotiations failed, would your company have been under any obligation, legal or otherwise, to have paid you for those negotiations and services beyond your general retainer? A. I cannot say whether they would or would not.

Q. Don't you know that the company would not be legally bound? A. I think it is very likely they would not have wanted to have paid it.

Q. You knew that this $50,000 was a charge against the City, did you not? A. Yes, sir.

Q. Ultimately? A. Yes, sir.

Q. In the last analysis it comes out of the City of New York, does it not? A. Yes, sir, I think it does.

Q. And if it had, in the last analysis, to come out of the Treasury of the Interborough Company, you would not have received the compensation, would you? A. I don't believe that for a moment. I think it would have been allowed, irrespective of that fact. I never discussed the question.

Q. There was no understanding between you and your company to that extent? A. No, sir. There was no understanding about it, one way or the other.

Q. And the resolution awarding you the $50,000 was after the contract was signed and after the period covered by the predetermination? A. Yes, sir.

Q. It never became, if at all, a legal obligation against your company until you had procured the approval of the engineer and the counsel to the Commission to that item of $50,000? A. No, sir. I cannot agree with you to that extent.

Q. When did this obligation become a legal obligation against your company? A. It was a basis for a charge against my company at the time the services were rendered.

Q. You can answer that? A. I don't know. When does a lawyer's services ever become a legal obligation against his client? It is when the services are rendered, I presume.

Q. That is the answer you wish to make on that, is it? A. Yes, sir.

Q. In regard to this item, how did you happen to arrive at the amount of $125,000 as a reasonable amount for these administration expenses? A. Well, the allowance was not $125,000, it was $150,000, and that was arrived at by general consideration — I think I have already stated my recollection of how it was arrived at. I can restate it if you wish me to do so.

Q. We have been trying to locate for several days by various

witnesses who ought to know all about this matter what evidence was before them that would constitute this allowance of $150,000 or $125,000, whatever it may be, a legal obligation chargeable against the City on account of the contract? A. I have tried to explain. If you are looking for definite vouchers covering that you would never find them, and it would be impossible to present them at that time because the allowance was one made against the time taken, as I understood it, at that time, by certain executive officers of the Interborough Company in connection with the execution of these contracts and the work leading up to it, and the question of fact which had to be decided, it seemed to me, between the Commission and ourselves was what portion of the time of those officers and their corresponding pay should be assigned to the contract or any special payments made for.

Q. Was this $150,000 the item that was allowed to Mr. Shonts for his special services? A. No, sir.

Q. You have testified Mr. Shonts devoted practically all of his time to these negotiations? A. Yes, sir.

Q. He was on a general salary, was he not, with the company? A. Yes, sir.

Chairman Thompson presiding:

Q. And he was paid that salary? A. Yes, sir.

Q. And yet he was devoting limited or none of his time to the specific service that general salary covered? A. Mr. Shonts, as I understood — you better ask him about that — when he took the position of President of the Company the understanding was he should devote his time very largely to operation, and I think a great deal of this work was somewhat outside of the purposes for which he was originally employed as President, but he had received, of course, his salary, and that, or part of that, item of $1,522,000 included his salary during the four years.

Chairman Thompson.— A man who gets $100,000 a year, how many hours a day do you think he ought to devote to the business of the employer, for $100,000 a year — how much spare time had he ought to have?

Mr. Rodgers.— My idea about employing men of that sort — you employ his intelligence and buy his brains.

Chairman Thompson.— How much of his brain power do you think you ought to get for $100,000 a year?

Mr. Rodgers.— I think you ought to get a great deal of it, of course. I think you ought to get the best he has in him all the time.

By Mr. Shuster:

Q. You have testified that Mr. Shonts devoted practically all of his time to these negotiations? A. I wouldn't say practically all, but the major portion of his time.

Q. Seventy-five per cent of his time? A. It would be very hard to say, but I should say two-thirds to three-quarters during the time this was running along.

Q. During all of that period, although not rendering the service covered by his retainer to the extent of but 25 or 30 per cent, he was receiving his full compensation? A. Yes, sir.

Q. Now, at the conclusion, he is given for this special service an additional special fee; wherein is the justification for that? A. I do not know that he neglected his services in any other direction.

Q. Do you mean to say his services were not a necessity to the company? A. No, sir, but whatever service he was required to perform for the company and in other connections I assume he did.

Q. But you don't know anything about it? A. Mr. Thompson asked me to state how much time a man should devote in earning his salary. He might be able to do everything required in an hour a day and might take him twelve hours a day. My idea is he would do what is required, no matter how much time it took. With reference to his services outside of this contract, I do not assume it took all of his time.

Q. Were not the services rendered by you and by Mr. Shonts and by the Auditor of this Company all part of their duty under their general retainers, their general employment? A. I have stated to you —

Q. Answer it yes or no? A. No, sir.

Q. What is there, if anything, in the way of record authority for your answer? A. There is nothing of record authority either way, so far as I know, from the records of the company.

Q. You have testified that so far as your own special fee of $50,000 is concerned, there was no prior arrangement between you and your company and that you did not believe the company would be legally bound to pay you that? A. I haven't said that. You said it.

Q. What do you say now? A. I didn't say anything about it that way. I said I assume there was a claim and basis for compensation.

Chairman Thompson.—I think the witness ought to answer the question of counsel. You evaded the question.

Q. You have testified that there was no record evidence establishing a legal obligation on the part of your company for the payment of this $50,000 prior to the making of the contract? A. I have testified there was no evidence establishing a legal obligation or an obligation not to pay it.

Chairman Thompson.— That don't answer the question.

Q. There was no agreement made with you at the time the services were made or begun until after the contract was signed, whereby you were to receive $50,000 or any other amount, whereby you were to receive the special compensation? A. No, sir, only as I have testified.

Q. Is that true in regard to Mr. Shonts's special services? A. I presume so.

Q. And Mr. Gaynor's special services? A. I presume so.

Q. How do you conceive the special items or services were within the contemplation of the parties as proper expenditures growing out of the negotiations or agreements contained in the contract, then? A. I will explain that again. I do not think I could have made my position very clear. Under the provision of the contract, and that was in complete accord with the parties to the contract, as I understood it at the time the contract was negotiated, there was a certain amount of superintendence and admin-

istration expenses properly chargeable against this contract in the form of precontractual expenditures, and that that would embrace some aliquot portion of the time of the officials of the company who have devoted their time to the negotiations of this contract, and for which they were to have been paid out of the general retainers and general service fees. Certainly that may or may not, but I consider that immaterial whether they were or were not, for example.

Q. I will ask you this question, which I think is fair, did any of the representatives of the City in the negotiations culminating in the contract with your company, know or have any information that you and Mr. Shonts and Mr. Gaynor were to receive special compensation for the services which you rendered for the company in those negotiations? A. It was never discussed with them.

Q. Then how could they have had it in their mind as a part of the contract? A. Well, I have been trying to explain that. The question of administration expenditures they had in their mind undoubtedly, because that was subsequently carried out on the part of the City as well as on the part of the Company, the fact that a great deal of the time and the corresponding salaries of certain officers of the company would be a proper charge under this contract. That was what was done by the City, and it was asked for by ourselves, and so far as I know, by the Brooklyn Rapid Transit as well.

Q. Did any officer of the City who participated in the negotiating and making of the contract with your company for the subway, receive any special compensation from the City? A. No, sir, but what I am trying to find out —

Q. You have answered it — now then, the charges that were allocated by the City for its law expenditures to this contract were simply the proportionate share of the regular legal expenses incurred during the period? A. Yes, sir.

Q. But that is not true with regard to the items as to yourself, and Mr. Shonts and Mr. Gaynor? A. It certainly is true with respect to the allowance for general superintendence here, because the items —

Q. We are talking about the special services and special pay-

ments which enter into — ? A. You are asking me to answer a question which I cannot do, and I can state the fact of what was said or done, but I cannot tell you the processes in the minds of the gentlemen who represented the City.

Q. How could they have any mind on the proposition if they didn't have any facts before them? A. They had the facts.

Q. That you were to receive $50,000 as a special retainer? A. Yes, sir.

Q. How did you get that fact? A. It appears in that memorandum.

Q. Prior to making the contract? A. No, sir. I am talking about after the contract.

Q. So that all the allowance for legal services and for administration, that includes any of the special pay, or pay for special services to the officers of the Interborough Company, or its counsel, were matters that were first brought to the attention of the City officials on or about July 25, 1913, three months or more after the contract had been entered into? A. That is true, so far as specific amounts are concerned.

Q. Was there during the process of the negotiations with the City at any time any statement made to any City official that the Interborough Company was to be allowed as part of the cost expenditures the payment for special services under the negotiations? A. Not specifically so stated, that is right.

Q. And no such charges were in the contemplation of the parties, at least the City, at any time prior to the making of the contract? A. That I cannot answer, whether in the contemplation of the City, or not.

Q. They had no knowledge of it, did they? A. I have simply stated no settlement was made as to any specific payments which would be made.

Q. Did you render a bill for $50,000 to your company for those special services prior to the time, or at any time? A. No, sir.

Q. Did you know they were going to allow you this $50,000 at the time that they did it? A. Yes.

Q. How long before that did you know it? A. I don't know. When I first discussed the amount of the fee it was sometime,

quite a considerable ahead of the time the matter was taken up with the City officials.

Q. Who did you discuss that with? A. Mr. Shonts, and discussed incidentally with one or two of the directors, one I remember of.

Q. Did you discuss Mr. Shonts's $125,000 also at that time? A. No, sir.

Q. What directors, if any, besides Mr. Shonts, did you discuss this $50,000 fee with? A. It was taken up in this connection.

Q. What director? A. Mr. Freedman was the man I had particularly in mind.

Q. Mr. Freedman and Mr. Shonts, were they the only directors you talked this matter over with? A. The only one I remember having talked about, except in the directors' meeting, I made a statement in the directors' meeting about the situation.

By Mr. Moss:

Q. Do you know whether Mr. Freedman got any portion of this bonus? A. I am satisfied he did not.

Q. Do you know whether any portion of the bonuses or any money at or about that time passed into Mr. Freedman's hands for any purpose? A. I don't know what you mean.

Q. I mean to say — this question has to be asked — there were certain bonuses paid, $125,000 to Shonts, $50,000 to you, and $10,000 to Gaynor, and I want to know whether at or about that time there were any sums of money passed to Mr. Freedman for his own use or for any other purpose from or on behalf of the persons who received the bonuses or through any arrangement entered into at about that time? A. I will make an unqualified denial of the fact that any such thing passed to him. As far as I am concerned, I know it did not and I am satisfied so far as Mr. Shonts is concerned that it did not do it.

Senator Towner.— Have you any knowledge as to the others?

Mr. Rodgers.— The only special allowances were made was the $10,000 to Mr. Gaynor.

Senator Towner.— Have you any knowledge as to the others, is my question.

Mr. Rodgers.— I have not any positive knowledge, of course, except as to my own fee, Mr. Chairman.

By Mr. Shuster:

Q. Have you any information? A. I had information or knowledge which would apply to the other people which precludes the idea that any portion of that passed to Mr. Freedman or to anybody else.

By Mr. Moss:

Q. What salary were you receiving at that time? A. I was receiving at the rate of $30,000 a year.

Q. And that was the amount that you were receiving at the time you got the extra $50,000? A. Yes, sir.

Q. Did you render any bill for that $50,000? A. No.

Q. Did anybody suggest that you should? A. No, sir.

Q. Did you give a voucher for it? A. Yes.

Q. Was it anything more than a receipt for so much money? A. I don't remember now the language of the voucher. I suppose it was a voucher signed to cover as paid according to the resolution of the Board of Directors.

Q. According to the resolution of the Board of Directors? A. Yes, sir.

Q. But your voucher did not specify any particular services, did it? A. I don't think it did, any more than to specify perhaps services previously specified in the resolution.

Q. Did you draw the voucher? A. No, sir.

Q. Did you intend to make a claim against the company for $50,000? A. Yes, sir, certainly.

Q. Whether they had allowed it or not, you were going to make it? A. Whether the company allowed it or not?

Q. Yes? A. I had no idea of suing the company, if that is what you mean.

Q. Were you surprised when the resolution was passed giving you $50,000? A. No, sir.

Q. You knew it was going to be done? A. I knew all lawyers fees have always been passed on by the Board.

Q. Did you know the Board of Directors were going to give you $50,000 before they gave it to you? A. I thought they were.

Q. What made you think so? A. The directors I talked about the matter with incidentally seemed to recognize the fact that —

Q. What directors gave you any idea before the meeting was held that $50,000 was going to be allowed to you? A. I do not know any director gave me any idea what action was to be taken about it.

Q. How could you know about the action? A. I had discussed the matter of the fee with Mr. Shonts and he had agreed that it was a reasonable fee and he said the matter would be passed on by the Board of Directors.

Q. At the time you discussed that, did you know he was to have an additional allowance too? A. No, sir.

Q. Didn't he speak to you about that? A. No, sir, he had already been allowed, I think, at the time, my fee was paid, $125,000. That was done by the Board of Directors.

Q. Didn't you think it was a very generous allowance? A. Well, I can't say I considered it overgenerous as an allowance. A similar allowance was made, as I was advised at the time, to Mr. Williams, $100,000.

Q. Mr. Williams was in the Brooklyn Rapid Transit? A. Yes, sir.

Q. He was not a lawyer? A. No, sir, he was President.

Q. He was not being allowed for legal services? A. I thought you were talking about Mr. Shonts.

Q. Was any lawyer in the Brooklyn Rapid Transit allowed for extra services? A. I don't know what they allowed.

Q. You have told us about Williams, have you any information? A. I have no information whatsoever about the Brooklyn Rapid Transit allowance except I understood at the time in a general way when we had the question of the legal allowances to the Interborough up, our legal allowances altogether were less than the Brooklyn Rapid Transit, but I never saw the figures.

Q. Have you any information any lawyer over there got an extra allowance, and if so, whom? A. I haven't any direct information about any of their allowances.

Senator Towner.— Have you any information?

Mr. Rodgers.— I have heard, yes, but whether an allowance

of five or ten thousand dollars, or what, I have heard that Mr. Yeomans was allowed something and Mr. Williams something.

By Mr. Moss:

Q. Five or ten thousand? A. I don't know whether five or ten, or any other sum. I had no sum mentioned. I only heard at the time and stated to me, and by whom, I cannot say.

Q. Was there any committee appointed to pass upon the reasonableness of the $50,000 to you? A. No, sir, not that I know of.

Q. You had a pretty good understanding it was coming along before it occurred? A. I assumed they would allow it, yes.

Q. Who first suggested $50,000, you or one of the directors? A. I did.

Q. To what director did you suggest that? A. To Mr. Shonts.

Q. Anyone else? A. I told you I thought I had mentioned the matter to Mr. Freedman because I remember the statement.

Q. What did he say to you? A. He said he thought it was very reasonable, and if the work was done by other lawyers on the outside it would cost the company three or four hundred thousand dollars.

Q. What allowances were given to other men in subordinate positions who gave all their time night and day? A. Those were all.

Q. Weren't there other men who gave their time night and day, small inconspicious men? A. Yes, sir, some.

Q. Was there any consideration of giving them something when you were getting ready to put this matter up to the City? A. No, sir.

Q. Did you know the $50,000 you were to get was to come out of the City by the arrangements that were put through? A. I knew it would be charged up against our contributions, for this work, if that is what you mean.

By Mr. Shuster:

Q. That contribution is the City's money under the contract, isn't it? A. Well, it is the price which the company pays really for the leasehold.

Q. And it belongs to the City legally and morally? A. (No answer.)

By Mr. Moss:

Q. You prepared the Exhibit 1, signed R. R. Rodgers? A. Yes, sir.

Q. Here is item No. 2, General Superintendence, an item $125,000 has actually been paid and $25,000 held in reserve to be distributed to the Engineering Department of the Operating Company; you meant to say the General Superintendence $125,000 had been paid, didn't you? A. I meant that was an addition to the item of $1,522,000 that was already before them.

Q. All that you specified was the $125,000 and the $25,000 to go under the General Superintendence here, isn't that so? A. Yes, sir.

Q. And you already knew the item of $125,000 was the $125,000 that had been paid to Mr. Shonts, didn't you? A. Yes, sir.

Q. And you knew the $25,000 that was to be paid was the twenty-five that was to be paid to Mr. Shonts, didn't you? A. No, sir.

Q. What $25,000 was held in reserve to distribute? A. The allowance against superintendence was $150,000. That was arrived at in the manner I have previously described. The original basis of that was the $1,522,000. Later on Mr. Coleman said, or someone said, it may have been Mr. Turner, but it was stated, that the books of the Company would be gone over, and he asked me to state whether any special payments would be found on there, and I stated an item of $125,000, and I had reference to Mr. Shonts's special compensation, would be found.

Q. Do you say you actually called Mr. Coleman's attention to an item of $125,000 that had been paid and you had Mr. Shonts's figures in mind at that time? A. Yes, sir, I did. I didn't say I told Mr. Coleman that.

Chairman Thompson.— We will take a recess now until half-past two.

(Whereupon, at 1:15 P. M. a recess was taken to 2:30 o'clock P. M.)

[Afternoon session of March 3 and 4 not in record. See index.]

March 9, 1916.

MUNICIPAL BUILDING, CITY OF NEW YORK.

Meeting of Committee called to order by Chairman Thompson at 12 o'clock noon, a quorum being present.

R. R. ROGERS, being recalled, testified as follows:

Examined by Mr. Moss:

Q. Mr. Rogers, you were acquainted with Mr. Shonts before you went into the Interborough Company's service, were you not? A. Yes.

Q. You knew him when you were in college, did you not? A. No. I was principally associated with him when he was Treasurer of the Isthmus Canal Commission.

Q. Well, Mr. Shonts, whose recollection is pretty good for things, but not for faces or names, said, "I knew him," referring to you, "when he was in college." A. Mr. Shonts knew me before my business association.

Q. Well, didn't he know you in college? A. No, I don't think so. I was out of college.

Q. But he knew you when you called at the office of Mr. —— A. Yes.

Q. Was that before you were associated with the Panama business? A. Yes.

Q. Did you go down there at his invitation? A. Yes, partly at Mr. Shonts' invitation and partly through Mr. Taft, who at that time was Secretary of War. I had become acquainted with him.

Q. Well, you went down to Panama anyway with Mr. Shonts? A. Yes.

Q. And when Mr. Shonts came back to New York you came with him? A. No, I didn't come back to New York until after a year after Mr. Shonts had severed his connection with the Canal.

Q. You came at his invitation? A. Yes.

Q. And it was with his assistance that you on leaving Panama

were appointed to some business in relation to one of the Government enterprises, their steamship business? A. No. You mean the Panama Railroad & Steamboat Company? Mr. Shonts had nothing to do with that.

Q. Well, Mr. Shonts testified, "I suggested it to Mr. Taft, and he made him General Counsel of the Government in this enterprise."

Q. Had he anything to do with you being retained in that connection? A. I don't think so. If he says so it is correct. I was general counsel to the Panama Railroad Company when I left —

Q. Didn't you know that he had helped you to retain it? A. I didn't know that he said anything about it.

Q. Well, he says that you continued to draw a salary from it? A. Yes. They paid me a retainer.

Q. Well, he as president and you as counsel have continued close in your relations? A. Yes.

Q. In your intercourse and your discussions of the plans of the Company? A. Yes.

Q. He says he remembers the bonus of $50,00 to you. Is that your understanding of it? The fee of $50,000. I don't mean to use the word bonus with any malice. A. Yes.

Q. Did you have any conversation with him before that was done? A. You mean about the fee?

Q. Yes. A. About the extra fee? You mean before the fee was actually paid?

Q. Yes? A. Of course I had a conversation with him.

Q. As to the amount? A. Yes.

Q. Did he fix the amount? A. We talked it over together.

Q. Well, did he fix the amount? A. He said he would take it up with the Board of Directors.

Q. Who first mentioned the sum of $50,000, did you or Mr. Shonts? A. I did.

Q. Was the payment to you two months later than the allowance by the City? A. The payment was made in September, I believe, and the allowance was made, it was agreed upon in the summer. It was actually allowed in the determination of the engineer, I believe in October.

Q. His testimony was that the payment to you was two months

later than it was allowed by the City. You substantially corroborate that? A. Yes, that is substantially correct.

Q. And was your item of $50,000 included in the prior determination that was allowed? A. Yes.

Q. Were any other extra allowances to lawyers or Mr. Shonts included in that determination? A. The Commission has before them a memorandum covering the further special allowances that were made in connection with that determination. It contains my fee of $50,000, a payment of $17,500 to Mr. Grout. There was $125,000 to Mr. Delancey Nicoll. There was a payment of $5,000 subsequently made to Judge Dillon, one of $10,000 which was made to Julian T. Davies, and then there was an allowance of $150,000 for general administrative services.

Q. And also the allowance to Mr. Gaynor? A. Yes.

Q. Those are all of them? A. I think so.

Q. Was the payment to Mr. Towns included? A. I think not.

Q. Now in order that we may have a better persual of the matter before us, I will ask you to point out if you will in contract three the provision under which it was claimed by the Interborough Rapid Transit Company these allowances should be allowed by the Public Service Commission or by the engineer. A. Page 9, Subsection 5 of Section 17, under the cost of construction clause.

Q. Let us read that right into the record.

Counsel at this point reads in Sections 4 and 5 of Contract No. 3:

> "(4) The actual and necessary net cost in money to the City for superintendence, insurance, damages, engineering, legal expenses and administration in and about construction and equipment; including in respect of the cost of construction for initial operation the expenses above referred to in this paragraph actually and necessarily incurred or payable by the City in and about Construction and Equipment prior to the date of this contract.
>
> "(5) The actual and necessary net cost in money to the Lessee for superintendence, insurance, damages, administra-

tion, engineering and legal expenses in and about Construction; including in respect of the cost of construction for initial operation the expenses above referred to in this paragraph actually and necessarily incurred or payable by the Lessee in and about Construction prior to the date of this contract and in addition the actual and necessary expenses incurred or payable by the Lessee in printing, engraving and certifying securities for Construction."

A. Then there is another clause relating to equipment, which covers the same phase:

"15. The word 'Equipment' to mean all equipment acquired and supplied for use on the railroad including all rolling stock and appurtenances thereto, whether such cars are used for passengers, freight, express, or any other purpose, all motors, boilers, engines, wires, conductors, ways, conduits (other than any system of ways or conduits built as a part of the permanent railroad structure), mechanisms, machinery, power houses (if any are needed in addition to those now owned by the Lessee), power substations, all tools, implements and devices of every nature whatsoever used for such generation, transmission, conversion, distribution or utilization of power and for the installation and maintenance of Equipment, all apparatus and all devices for lighting, heating, cleaning, signalling and ventilation (except such chambers and gratings as are built as part of the railroad structure), all pumps, fire alarm and fire prevention systems and appurtenances, and all telephone and telegraph wires or appliances, including all real estate or interests therein used therefor or in connection therewith — whether such Equipment be situate on or near or separate from the railway, provided that the same be acquired and supplied for use in connection therewith or for any of the purposes of the railroad. Provided, however, that real estate or rights, franchises, easements or privileges therein or thereon acquired for terminals, storage-yards, shops, roadbed, stations, station approaches or otherwise for the railroad shall not be included in Equipment, but shall be included in Construction.

"The expression 'Equipment for Initial Operation' shall mean Equipment provided for the initial operation of the railroad costing twenty-two million ($22,000,000) dollars or such sum as may remain of the said twenty-two million ($22,000,000) dollars after making the additional contribution toward the cost of construction as provided in Article IX."

Q. Well now, legal expenses in and about construction. Do you say that the allowance of $50,000 to you was so covered by those words, "Legal expenses in and about construction?" A. I think so.

Q. Please explain your views. A. In the first place as a matter of law, I think it has been settled by the decision of the Public Service Commission in this State, both departments, also the general transit law, that a part of the construction cost of any work, fulfillment of any contract is a preliminary expense leading up to the execution and termination of the contract. That was the construction which was placed upon that clause of the contract both by the City and the Company. Not ony after the contract was formed, but during the process of formation of the contract, and the clause in question to which you have reference would have to become effective before it could be made to apply to these preliminary expenses, because there was no physical construction. There might have been some physical construction, there might have been some preparations of plans which were ultimately used in construction, and I guess there were. There might have been on the part of the Commission. There were none on the part of the railroad.

Q. The services which you had been rendering extended over how many years for which you were paid $50,000? A. The negotiations in connection with this contract practically extended over four years.

Q. How long had these negotiations been directed to the substance of the particular contract which was finally executed? A. That contract is an evolution. It grew out of negotiations between the Company and the City which really began before my connection with the Company. There were certain plans which we naturally agreed upon. That plan would probably be modified or withdrawn leaving certain features of the contract settled. They were adopted.

Q. Now, Mr. Rogers, you say that propositions were made and propositions were rejected? A. That is true of practically every road. Propositions, new propositions, accure in some form or other.

Q. Your $50,000 for extra services runs back into all these negotiations, forming propositions that are not at all in this contract? A. There were no form or forms which were ever made by the Interborough Rapid Transit Company which didn't tend to some extent, to some degree to assist as a part of the formation of the ultimate contract.

Q. You mean to say that about any business where people are transacting business for many years? A. When two men get together and negotiate about the form of the contract. If they don't agree the first time they may agree at the second time. It is a case of negotiations leading up to the final contract, and so it was here.

Q. I will ask you to consider this phrase: "Legal expenses in and about construction," and I ask you if construction isn't defined in this contract. A. Yes, construction is defined in the contract.

Q. Now, the phrase "in and about construction," you notice in subdivision 5 of clause 17, "Legal expenses in and about construction," and the railroad is so capitalized today that payments shall actually consist of construction. Now we go back to definition under Section 14.

Counsel reads Section 14:

> "14. the Word 'Construction' to mean all work of constructing the railroad (together with the reconstruction of parts of the Existing Railroads for the purpose of physically connecting the same with the railroad which the Engineer shall certify to be necessary), including the doing of work, the providing of materials, the restoration and reconstruction of street surfaces, sewers, and all surface, subsurface and overhead and abutting structures interfered with during the building of the railroad and such reconstruction of the Existing Railroads and all other work to be done or materials to be furnished of every nature whatsoever necessary to the completion of the railroad structure, all tracks (meaning thereby

the track structure complete, includnig all ballast, ties, concrete rails, special work, spikes, joints, bolts, tie-plates and all other material or apparatus necessary to build the tracks, but not including electrical or signal material or apparatus), together with all real estate and interests therein necessary to be acquired or extinguished for the purpose of constructing and operating the railroad and for the purpose of such reconstruction of the Existing Railroads."

Q. That is your definition of construction? A. Yes.

Q. And the clause which allows legal services speaks of legal services in and about construction. Now, with those two clauses in view, I ask you to again show, if you can, wherein that $50,000 came within the provision of that contract. A. Well, the construction of a house, for example, of course means the erection of the various commodities, of the various materials, which constitute the house, but the cost of construction of the house, you will find there are various other items not connected with the physical erection. We have, for example, plans, contracts, which would be under the legal phase, and various other matters leading up and in and about the construction, and that is so with that clause mentioned here.

Q. So that if the lawyer had drawn the contract for the furnishing of those materials, or the doing of this work in such a manner as would come under the definition of a contract, he would then be doing legal work under the cost of construction? A. Yes.

Q. How much of the $50,000 which you received as an extra fee was for services in the drawing of contracts for furnishing materials or work under the definition of construction? A. None, because no sub-contract had been entered into.

Q. I know, but railroad construction doesn't refer to these sub-contracts. You did some work, of course, in the preparation of the contracts, this very contract which is in question and perhaps that might be possibly an item of legal expense in connection with the contract. Now how much of the $50,000 was represented by the work that you did in connection with the drawing or overseeing of that contract? A. I would not undertake to say how much of the payment I received should be credited to the approving of

that contract or any particular clause of it. It is connected with the whole work of preparing that contract.

Q. All of this time you were on a regular salary? A. Yes.

Q. You did the work under a regular retainer? The work was practically done when this extra retainer was given you? A. Yes. The work had all been done at the time I was paid, because that was in connection with work done prior to March 19th, 1913, when the contract was signed.

Q. How much excessive work, that is work in connection with propositions or policy, that were not understood as included in that $50,000? A. I couldn't say that any of the work which was done in connection with that was absolutely thrown out or thrown away. You will see that is an extremely complicated contract. The result in there is the result of a series of long negotiations between the officials of the company and the officials of the City.

Q. All of these bonuses that we have spoken of were in the prior determination as fixed by the engineer in October, 1913? A. Yes.

Q. Did you know that at the time? A. Of course.

Q. Did Mr. Cravens know it at the time? A. Certainly, he must have.

Q. Did Mr. Cravens and Mr. Harkness know it at the time? A. Of course they did.

Q. Did the services for which Mr. Gaynor received extra compensation relate to construction any more than yours did? A. I think in about the same way they related in and about construction.

Q. Now, what would you say about the services rendered by Mr. Grout, $17,500, what did they have to do with construction? A. Just in the same sense that Mr. Gaynor's and my services related to the construction.

Q. What was it that Mr. Grout did? A. Mr. Grout was employed to perform services in an effort to bring about a meeting of minds between the private corporations and the public corporations, over this rapid transit agreement.

Q. Did you ever present on behalf of the railroad company details of his services? A. No.

Q. You have them in mind, haven't you? A. I have in a general way, that is, I know in a general way what he did.

Q. You say he was to bring about a meeting of minds. Whose minds? A. The meeting of minds between the responsible parties for the City charged with the negotiation of this contract, and the officials of the Company.

Q. Who did he confer with representing the City? A. I don't know.

Q. Well, he reported, didn't he? A. I will say about Mr. Grout's services that a portion of those services I always assumed were at a time when I was not in this country, when I was in Europe. He was first retained along in the spring of that year, along in 1911. Perhaps he had better answer himself on those.

Q. What services did he render after June, 1911? A. I don't know.

Q. Was any itemized statement of his services rendered? A. No.

Q. Were the services of Hays & Hershfield included in any allowance? A. No.

Q. They were included in an application for allowance, were they not? A. I had the fees of Hays & Hershfield before me at the time of the conference which I have already testified to, but the question of allowing that as a part of pre-determination charges was not pressed at all and was excluded.

Q. They were presented with the charges to be paid by the City? A. I think a settlement was made.

Q. What connection could there be or was there between the services rendered by Hays & Hershfield and Untermyer & Marshall, $63,000, what connection was there between those services and the construction of the railroad? A. One time I thought that in a broad way those services might be legally connected with it for this reason. It became absolutely preliminary before either the City or the private company should permit themselves to make a contract to have the legality of the contract determined. There had been serious questions raised as to legality. It was very much to the interest of the City and it was determined that it should be tried out in the court, and all those questions presented, and the

suit was brought about. It resulted in a decision of the Court of Appeals absolutely confirming the legality of the contract.

Q. Well, there was no contract at all, was there? A. There was not a formal contract, but there had been. That plan of February 27th, which was the basis of that contract, before the Court of Appeals was acceptable, all the essential features of the contract, as actually signed, and raised all the questions as to legality.

Q. Were these particular items which we have been talking about mentioned and discussed between all these persons that I have mentioned, that is, did the conferences include yourself, Mr. Cravens, Mr. Harkness and Mr. Coleman? A. Which particular question do you mean? I have testified —

Q. I mean all of these items. A. Yes, in a general way all of them were discussed. Some of them were discussed in detail.

Q. Did Mr. Cravens say that he thought the allowance of $50,000 was reasonable? A. I never saw Mr. Cravens.

Q. You saw Mr. Turner? A. Yes.

Q. Did Mr. Turner say that to you? A. I don't think he did. I don't recall that he said anything about it.

Q. Mr. Turner was at the conference when these matters were discussed? A. Yes.

Q. Did he, representing the chief engineer, state in words or in substance or by actual approval that the allowance to you of $50,000 was right, legal or proper? A. Mr. Coleman was there and Mr. Harkness was there. Mr. Turner was there at all the conferences, and I don't know that I can say which one of these particular gentlemen referred to the matter in detail, but I do remember when the question of my fee came up there that I stated what had been the position of my own company about the matter, that if I had, as I was privileged to do, gone outside and got the assistance of a great many lawyers to assist in the preparation of the contract, that the actual cost to the company and the City under those circumstances would have been several hundred thousand dollars; and I think Mr. Coleman recognized in that conference that there had been a saving to the City as a result of that.

Q. What I am interested in is the individual. Did not Mr. Turner say that the allowance to you was right, or did he object to it? A. He did not.

Q. And was the allowance of that item the result of that conference, or one of the results of that conference? A. I assume it was.

Q. You say Mr. Cravens was not present, and I remember your prior testimony on that subject. You have already answered that Mr. Cravens had knowledge of the including of these bonuses in the prior determination, but he was not there. Will you say that Mr. Turner knew that item and bonuses, yours and Gaynor's and Shonts', were included in the prior determination? A. The question of legal fees was discussed quite openly and Mr. Turner must have had knowledge. Later on, and I think you have it in evidence already, at Mr. Craven's request I handed him a statement showing him what these several items were. I presume Mr. Turner saw that.

Q. You say a certain amount, I think about $10,000, was allowed Mr. Nicoll. The claim was larger, was it not? A. Much larger, yes.

Q. It was presented with the idea that his claim represented legal services in connection with the construction, wasn't it? A. Mr. Nicoll had rendered a general bill for services against the Company which bears a lot of items outside of this. I don't know what they were. The question came up as to how much of Mr. Nicoll's bill for services rendered were for two or three years contract, and that related, as I have testified heretofore, to the relative amount of time of Mr. Nicoll's.

Q. Now I have here Exhibit 6, which shows an amount distributed as follows: One amount, $22,863 representing transit subway construction. That is the way that was charged. Others, suspense, $10,000, proposed subway route. General law expenses $20,308? A. I cannot testify as to the distribution made by the auditor of Mr. Nicoll's fee. I think you should ask him about that.

Q. I have other bills of Mr. Nicoll, one of $36,516.48, another one of $25,345.25, without any distribution. Now these bills were all present in that conference, or the claim represented by them, were they not? A. I only had an item showing what Mr. Nicoll's bill should be properly regarded as chargeable under this aggregated, and the question came up as to about how much of his time had actually been devoted to work in connection with these contracts.

Q. I have here the vouchers for Mr. Grout's claim, vouchers Nos. 4 and 5. There are no items or expenses attached to these vouchers. You are not able to give from recollection any more than you have testified to here? A. No. Mr. Grout's services were more comprehensive than I am at the present time—or rather have any knowledge to give.

Q. Have you stated now with reference to all these items the grounds upon which you claim they should be allowed by the engineer as legal expenses in and about construction? A. In a general way I have, yes.

Q. Do you want to add anything to your statement? A. Not that I know of.

Q. Did anyone in that conference suggest that the bonuses so-called would, in the long run, go against the City? A. I won't say. There seems to be a misapprehension that the City has actually paid these allowances. We agreed to contribute a certain sum of money and that was to be diminished by the expenditures on certain other contract expenditures.

Q. But they will be paid by the City eventually, won't they? A. I should think not. The contract was that the Company should supply $58,000,000, and from that was deducted first a discount of 3 per cent. That made $58,400,000, and then from that was deducted the preliminary expenses amounting altogether to $500,000, as against nearly a million dollars debt limit, which had been set aside against it.

By Chairman Thompson:

Q. What do you mean by that? A. I explained that at the last conference. These contracts were actually signed and it became important to create from the available debt margin of the City a certain amount to cover the probable cost to the City of this construction. This was before the contract was signed, the preliminary expenses. I had estimated them very roughly at a million dollars. But at a conference on the morning before, I believe the resolution was actually passed upon by the Board of Estimate and Apportionment, setting aside the amount considered available by amending it to cover the construction and they were consequently adjusted at about $887,000.

Q. You say they were adjusted? A. Yes. They were not adjusted in the sense that either the Company or the City would recognize as binding.

Q. Then they were not adjusted? A. That much money was set aside to estimate ahead for what should be set aside later.

Q. Then you should not use the word "adjusted."

By Mr. Moss:

Q. You don't really mean to say these bonuses are not against the City? A. I have not said that.

Q. Are they not against the City? Don't they reduce the City's interest? A. No. They don't reduce the City's interest except to this extent, that after these expenditures had been made out then the amount of cash which would have been distributed by the Company would have been correspondingly increased.

Q. Under the best possible conditions would not the City have to pay one-half of them? A. I don't think the City would ever have to pay any of it.

Q. Now, Mr. Rogers, you say that the only way that the City could be put in a position where it would have to stand responsible, pay or whatever you call it, the legal fees would be by charging them up to construction? A. Under that class of construction.

Q. There isn't a thing in the contract which would put these legal charges under construction? A. Yes. You are wrong.

Q. Then explain it? A. I have explained it.

Q. Now in order to get legal charges such as these were, how would they come under the contract, how would they connect them with the term "construction?" A. In and about construction.

Q. Yes. You would have to go into that particular which you showed me, legal expenses in and about construction? A. No. I will answer that no.

Q. Where else? A. You will get it out of the spirit of the whole contract.

Q. Did you charge it to "spirit?" A. I charged it to the contract.

Q. Just why did you go to all this trouble to charge it to the construction? A. Because these expenses were preliminary to actual physical construction. They related to negotiations and forms of contract about construction.

Q. Therefore you charge them to construction because it has produced construction? A. I charge them to the contract.

Q. But to construction? A. Yes.

Q. Will the Interborough Rapid Transit Company produce this $58,000,000 before the City gets anything? A. No, I would not undertake to say that.

Q. Would it under the contract? A. No, it depends upon the process of the road.

Q. Does not the contract require that? A. No, it does not.

Q. In the matter of the $129,659.09 allowed for engineering and superintendence, does that include $10,000 allowed to the auditor? A. I think not, but I cannot say without examining. My impression is it did not.

Mr. Moss.— I withdraw that question. Strike it out.

Q. Whatever these amounts were they were allowed in the conference where you sat with Mr. Harkness, Mr. Turner and Mr. Coleman? A. I think Mr. Sample was there at one time.

Q. Were each of these matters discussed or passed upon or brought up while all of those persons were present? A. I cannot say that. All of these matters were discussed at some one time or other during the course of these conferences.

Q. Did either of these gentlemen express themselves upon either of these allowances, particularly the allowances to you, to Mr. Shonts and to Mr. Gaynor? A. Only just as I have testified.

Q. Did you ever have a conference on this subject when less than three persons were present? A. I don't remember any. I think there were several conferences, but I cannot say who was present at each one of those several conferences.

Mr. Moss.— I will excuse you temporarily, Mr. Rogers. Mr. Harkness, will you take the stand, please.

LEROY HARKNESS, being recalled, testified as follows:

Examination by Mr. Moss:

Q. Mr. Harkness, were you in the office when Mr. Watson was there? A. I was in the office of the counsel to the Public Service Commission, yes.

Q. Do you agree with Mr. Rogers as to the provisions of the contract upon which the claims were presented and discussed? A. Yes.

Q. As to legal construction you mean? A. Yes.

Q. Legal expenses in and about construction and then the clause defining construction? A. Yes.

Q. When the claim of Mr. Shonts was presented did you say anything? A. What do you mean?

Q. When this subject of an allowance of $150,000 to Mr. Shonts was discussed, did you say anything? A. All I can say on that, Mr. Moss, is that I was present at one or two conferences at which all these matters were under discussion. What I said I cannot remember.

Q. Do you know that that item was under discussion? A. I know that, yes.

Q. It went through with your consent? A. Yes.

Q. Will you say the same about the $10,000 to Mr. Gaynor? A. Simply in this way. I hadn't paid much attention to it and wasn't specially concerned in the details.

Q. You knew that item of $10,000 was under discussion? A. I must have known it.

Q. What about the $50,000 to Mr. Rogers? A. I must have known there was that detail in the memorandum.

Q. Do you remember any remark by Mr. Turner on any of those amounts? A. No.

Q. Do you remember any conversation of Mr. Cravens in regard to any of these amounts? A. I don't remember any, no.

Chairman Thompson.—We will now take a recess until 2:30 P. M.

Whereupon the meeting adjourned to 2:30 P. M.

AFTERNOON SESSION.

Meeting called to order by Chairman Thompson at 3 P. M., a quorum being present.

By Mr. Moss:

In connection with the testimony of Mr. Shonts and Mr. Towns, I want to read into evidence three checks. These are checks of Andrew J. Freedman, drawn on the National Bank of Commerce, the first dated January 20th, 1910. I call attention to the fact that the visit which Mr. Towns and Mr. Campbell and Mr. Shonts paid to Mayor Gaynor was April 22d, 1910. This check is to the order of Edwin Hawley for $102,500. On the side of the check it is stated endorsed to Edwin Hawley and deposited in the National City Bank.

The next check is dated February 3d, 1910, and changed to February 10th, 1910, to Edwin Hawley for $50,000. On the side it appears to be on account of J. M. 4½ and interest in the same way.

The third check dated January 20th, 1910, is by Freedman to Hawley for $625, and on the side is charged to the account 5,000 Inter. Met. endorsed the same date.

Mr. Chairman, I have found among the papers passed over by Mr. Colby, a paper that appears to be the unsigned report of the committee that recommended the bonuses to Mr. Shonts.

Chairman Thompson.— Has that been introduced in evidence?

Mr. Moss.— It does not appear to have been introduced, therefore I will introduce it now.

[Report of Committee above mentioned is dated New York, June 4th, 1913.]

Mr. Moss.— By the way, Mr. Chairman, the extensions of stations are matters that do not generally interest, but they have largely increased the carrying capacity and business of the railroad. This is valuable, I think, at this time, regarding the foundation of the disposition of this matter as to legal services in connection with the construction. We have here before us a statement from Mr. Shonts' standpoint, of the nature, character and very

historically — the steps that were taken by him — and upon which this claim was based.

Mr. Quackenbusch.— I think, Mr. Chairman, if I may be pardoned, the answer to the inquiry that was propounded to Mr. Fisher, the Secretary of the Company, when he was examined concerning that, covered this point. Mr. Moss may not have had that in his mind. The paper has never been spread upon the minutes. I think the Chairman was present at the time.

Mr. Moss.— I call attention to a letter of Mr. Shonts to the Mayor.

Mr. Moss.— Mr. Whitney, will you please take the stand.

TRAVIS H. WHITNEY, being recalled, testified as follows:

Examination by Mr. Moss:

Q. Mr. Whitney, do you know that any of the amounts allowed by the engineer in your prior determination included a bonus to Mr. Shonts of $125,000 or $150,000? A. No.

Q. Or any bonuses to Mr. Gaynor? A. I think I may have known that there were payments to Mr. Gaynor and Mr. Rogers, and one or two others who are mentioned there, because the matter of the amounts to be allowed in the prior determination was a matter of discussion among the Commission with the representatives of the engineering and legal departments.

Q. Well, was the bonus of $50,000 to Mr. Rogers discussed by yourself and any of the Commission with anyone? A. Not by me, no, sir.

Q. You knew of them? A. I think I must have known of them, because the matter of the amounts going into this prior determination was discussed by the Commission.

Q. Were they discussed in the meeting of the Commission? A. In conferences.

Q. There were no minutes of these conferences? A. No.

Q. Were you present as secretary? A. I cannot say that, as I say they were not formal meetings.

Q. You kept no record? A. No.

Q. What commissioners do you remember in any conference when the $50,000 allowance to Mr. Rogers was discussed? A. I am quite sure that Judge McCall and Mr. Maltby particularly discussed these matters.

Q. Do you remember anything particular that they said? A. No.

Q. Did either of them express any disapproval? A. You will recall that Mr. Maltby, when chief engineer finally filed his determination in October, 1913, the Commission filed objections to that determination, and by various extensions of time that was left open until April, 1914. During that time my recollection is that there were discussions between the commissioners and representatives of the company and representatives of the two departments I speak of.

Q. Did either of these commissioners or any other commissioner express any disapproval of the allowances of the $50,000 item to Mr. Rogers? A. Commissioner Maltby, as I remember it, brought up the matter of filing objections to the determination and objections were filed and he and the others went over that matter and in April, 1914, the Commission finally withdrew its objection and that was unanimous action on the part of the Commission.

Q. Did Commissioner Maltby join in that action? A. Yes.

Q. What information did the commissioners have before they withdrew their objection? A. I really don't know, because I cannot recall any talk when the entire Commission was together in a discussion of the matter. It was a matter that Commissioner McCall and Mr. Maltby and the engineer, or somebody else, discussed without me being there.

Q. In any discussion you heard or participated in what ground was stated for allowing the services to Mr. Rogers as a service connected with construction? A. I cannot recall that there was any question other than the question of reasonableness of the amount allowed.

Chairman Thompson.— We will now take a recess for ten or twenty minutes, and will call to order as near four o'clock as possible. I will put on the record that the Committee is going to have an executive session to take up the question of a preliminary re-

port to the Legislature. The first question that comes up for discussion is the old question, which naturally calls to the attention of anyone looking into this subject from the ordinary point of view that the City, which has been engaged for some time in the construction of transit facilities through the Public Service Commission, appointed by the State, has an inconsistent duty because the City pays the entire cost and the cost of the Commission, and yet has no power over the administration force. Last winter this question came up and was gone into by this Committee to some extent, and a great many people were called upon for their opinions. We had members of the different public service commissions and we had officers of the City. We consulted various public utility corporations, had them come before us and express their views and opinions. If my memory is correct, the unanimous opinion was that the course of procedure followed here was wrong and not practical, that the City paying the expense and the City being the only locality interested the force utilized in constructing these transit facilities should be in some way responsible to the City, but the statement was made that at that time it would be bad to turn it over. Therefore the Committee tentatively desire to take up the subject of turning this to the City and two or three plans are suggested, one is to turn it over to the Board of Estimate and Apportionment, which would mean that the voting power, the direct responsibility, would be ultimately with the voters of the City at large. The other plan was to turn this over to the five borough presidents, giving each member a vote. That would grant to the outlying boroughs, like Bronx and Queens, a fair representation, because the extension of those lines into those districts is very important. Then another suggestion has been made that there be a board, one from each borough, appointed by either the Mayor and confirmed by the Board of Aldermen or appointed by the City and confirmed by the Board of Estimate. The Committee has concluded to call a public meeting, that is to sit as a committee as we do, but to set aside next week Friday and hear everybody in the City of New York who is interested, taxpayers, public service corporations, Board of Estimate, borough presidents, District Attorney's office, real estate corporations, Corpora-

tion Counsel, civic bodies, in fact everybody, and we will set aside next Friday, a week from today, for that purpose. We will have the meeting here, and if it looks as though we would not be able to accommodate the people, we will go to the Aldermanic chambers if needed. We will have all day.

Now we suggest that the civic bodies that feel interested appoint someone to be here, and of course the time will have to be limited, and we desire those that want to be heard to indicate to the Committee at least twenty-four hours before, in order that time can be assigned and we can work that out. We will have to conclude the hearing that day because if a report is made it will have to be made very soon.

Mr. Moss.—Mr. Chairman, I would ask that Mr. Crimmins be excused until tomorrow morning, bringing certain papers with him that we have asked for, if it is agreeable to you.

Chairman Thompson.—You may be excused, Mr. Crimmins, until tomorrow morning at eleven o'clock, and bring with you such papers as you have been requested to bring.

The Committee thereupon took a recess until 4:10 P. M.

The Committee reconvened, a quorum being present.

TRAVIS H. WHITNEY, being recalled, testified as follows:

Examination by Mr. Moss:

Q. Mr. Whitney, we were asking you what part was taken by commissioners and what commissioners said regarding this bonus of $50,000 to Mr. Rogers. Are you able to say any more than you did before? A. My recollection, Mr. Moss, is that that matter was very largely handled directly in conferences between the chairman of the Commission and one or more other commissioners and the representatives of the Company and Mr. Coleman, of the legal department, and Mr. Cravens and Mr. Turner of the engineering department, and I was stating that I recall one of the commissioners, Commissioner Maltby, made a public statement in reference to that matter.

Q. Have you his statement? A. No, sir.

Q. The determination of the chief engineer was filed October 20th, 1913. It was held there and was not finally settled until April, 1914. On the 26th of November, 1913, Commissioner Maltby, at a meeting of the Municipal Engineers discussed a paper written by Mr. Harkness on the subject of the dual contract.

Q. How was that an approval of the $50,000 bonus to Mr. Rogers? A. It isn't, sir.

Q. I was simply reading it. When it speaks of $45,000 it probably refers to the salary of Mr. Quackenbush. A. I don't know. It simply says he has been going over the list.

Q. That indicates that he has been going over the list of disbursements of regular salaries. A. My impression is that was the 26th of November, and on the 19th and 20th filed its objection to that prior determination.

Q. Do you know whether the bonus of Mr. Grout was brought to his attention or either commissioner? A. I don't know.

Q. Do you not recall of that bonus being discussed with other commissioners? A. I didn't hear of it.

Q. Was the bonus of $125,000 or $150,000 to Mr. Shonts discussed with any of the commissioners? A. I don't recall it.

Q. Was it known by any of the commissioners or by yourself that Mr. Shonts received a bonus of $125,000 or $150,000? A. I heard at one time that bonuses had been paid by the Company to some of their men, but that statement was not connected with any determination, and I did not know that those bonuses were entering into any determination.

Q. Do you believe, Mr. Whitney, that the Public Service Commission or any members of the Public Service Commission knew that there was a bonus represented by figures $125,000 and the figures $25,000, aggregating $150,000, paid to Mr. Shonts? A. I never heard as a bonus to Mr. Shonts. My impression is it was not known as such.

Q. Have you any knowledge how it came that the allowance of the large item of $153,200, $150,000 of which dealt directly with Mr. Shonts, how that came about? A. No, sir. My impression is that the chairman of the Commission left that largely to be gone over between Mr. Rogers and likely with Mr. Coleman.

Q. Did Mr. Coleman ever give you any such information? A. No, sir.

Q. Did Mr. Coleman give such information to any member of the Board so far as you know? A. I cannot say, because they talked with him directly.

Q. Are you not of the opinion that they put one over on your Commission with regard to the Shonts bonus? A. I do.

Q. Why do you say that? A. Because as I read the records since I have seen them, that allowance of $125,000 was on account of an item for administrative expenses, which might in itself have been a reasonable allowance as administrative expenses during a period of negotiation. In fact, if you read that it says on account of administrative salaries, salaries of the vice-president, chairman of the Board, treasurer, auditor, etc. It does not mention the president.

Q. It does not mention the president? A. That item as it stands does not mention the president.

Q. Where it stands it mentions administrative salaries of various officers of the Company at $532,000, of which is deemed reasonable to allow $125,000. I read for you: "For the period March 1st, 1909, to March, 1913, salaries and incidental expenses for chairman of the Board, president, vice-president, treasurer," etc. A. That is not the one I refer to.

Q. Perhaps you have this in mind. In the memorandum by Mr. Rogers for Mr. Coleman: "The total superintendence on this item $125,000, has actually been paid and $25,000 is held in reserve." A. No, sir.

Q. I am referring to a memorandum which is a copy on file, and which I saw on exhibit before the sub-committee about a month ago.

Q. When you say they put one over, do you mean the Interborough Rapid Transit Company? A. I mean that that allowance was what amounts to administrative salaries and to my mind would hardly allow the charging to cost of construction of the specific payment to the Interborough Rapid Transit Company.

Q. You mean the Interborough Rapid Transit Company's representative put that over? A. Yes.

Q. Do you say that Mr. Coleman never mentioned the fact that the $125,000 was allowed to Mr. Shonts? A. No.

Q. Did Mr. Harkness ever mention it? A. No, sir.

Q. Was there any inquiry made, so far as you know, concerning this report of Mr. Rogers to Mr. Coleman, saying general superintendence on this item of $125,000 has actually been paid and $25,000 is held in suspense? Was any inquiry made about that? A. Not that I know of. It might have been made by men in the department who were working under instructions from the commissioners.

Q. Do you remember having had any conversation with Mr. Harkness about this matter? A. He may have mentioned to me the fact that they had been in conference on the question of prior determination.

Q. With reference to this $125,000? A. No.

Q. Was not mentioned to your knowledge or information? A. No.

Q. By Mr. Turner? A. He may have talked about the prior determination. I don't remember that specifically.

Q. Are all the memorandums referring to this subway contract in one place in your office? A. If you mean the entire contract.

Q. Yes, sir. A. Not necessarily, no, sir.

Q. Are there in your office somewhere in other places than the main file, memorandums relating to the subway contract? A. In my office —

Q. Now just answer my question, Mr. Whitney. That is a fair question. A. In my office, in the general file room are all of the formal papers that were before the commission.

Q. Who has charge of these? A. Mr. McKinney.

Q. Are there files or reports of correspondence and memorandum relating to the subway matters in other places than in Mr. McKinney's office? A. The various data and memorandum that may never have been transmitted to the Commission are in the files of the engineering department or in the files of the electrical and equipment department.

Q. Neither memorandum go to your office? A. That would be their departmental memorandum.

Q. If Mr. McCall, for instance, had received correspondence, reports, statements, etc., from persons regarding the terms of the subway contract, would they be with Mr. McKinney, or is it possible they were somewhere else? A. The rule of the office is they would come to Mr. McKinney's office to be registered, but it might be handed to the head of the department and might not go to the general files for some time.

Q. Are there any documents or memorandum, communications and correspondence relating to the terms of these contracts that are not in the regular file of Mr. McKinney? A. Departmental memorandums, yes, sir.

Q. How would those be found? A. They are indexed and filed.

Q. Suppose we wanted to find all the correspondence and memorandum that Mr. McCall had handled, how would we find it? A. If it came through me it would be registered with index cards showing it.

Q. Wasn't it known in the office that there was files of correspondence or packages of correspondence that are not in the files that are controlled by Mr. McKinney? A. Yes, departmental memorandum.

Q. What might departmental memorandum contain and cover? A. All copies of communications to the Commission that would be copies sent by the heads of those departments directly to persons outside of the Commission. For instance, during the time of the negotiations of the dual contract, Mr. McAneny, who was chairman of the Board of Estimate, might ask the chief engineer or the counsel every day with respect to certain subjects which would be sent, and the index would not necessarily be in general files at all.

Q. Are there any papers with reference to these bonuses, any memorandum with reference to the views of the commissioners that are not in the regular files? A. The supporting memorandums on the determination are in the chief engineer's files.

Q. Are there any that are not there? A. Not that I know of.

Q. Or in the legal department? A. None other that I know of.

Q. Are there any informal files relating to the contract, the subway contract — so-called informal files? A. Yes, sir.

Q. The formal and informal papers are kept together, that is,

are all the formal and informal papers that relate to the subway contract together? A. Yes.

Q. Whether they came before the Commission or whether not, is that correct? A. They are either in the general file room or in the departmental files.

Q. Have you brought here all of the files of your department relative to the item of $1,000,000 under Article 11 of Contract 4, up to March 19th, 1913? A. I think so.

Q. Well, have you brought here all of the files of your department relative to the item of $1,000,000 in Article 11 of Contract 4, up to March 19th, 1913? A. I think so.

Q. They lay before you? A. I think so.

Q. Are there any papers or documents of which you have knowledge relative to the matter which you have not with you? A. So far as I know, Mr. Moss, those are the only papers.

Q. Have you received any statement or report in this connection which are not to be found in the files that you produce here? A. I don't know of any.

Q. Have any papers been here relating to this matter, copies of which have not been retained and indexed in your files? A. Not that I know of.

Q. What connection did you have with the negotiations which resulted in this $1,000,000 item? A. Nothing.

Q. Now the $1,000,000 item, in order that the record may be perfectly clear, is found in Article 11 of Contract 4. I read it:

> "Article XI. As one of the considerations moving to the City and upon the faith of which it makes this contract, the Lessee agrees to contribute toward the cost of construction of the Railroad. The amount of such construction shall be Thirteen million five hundred thousand ($13,500,000) dollars, (which includes the sum of One Million Dollars ($1,000,000) to be contributed by the Lessee through the conveyance to the City of all easements in perpetuity necessary for the portion of the Broadway-Fourth Avenue Line between Fourth and Tenth Avenues, in the Borough of Brooklyn, as such portion is indicated on the plans, including the double track railroad structure and appurtenances thereto already constructed

between such avenues) and in addition the amount hereinafter required to be paid by the Lessee on account of the physical connection between Subdivisions I and II of the Broadway-Fourth Avenue Line at Canal Street. Such contribution of Thirteen Million Five Hundred Thousand ($13,500,000) Dollars (except such amounts as shall be expended on the acquisition of such easements and railroad property and on the items referred to in paragraphs (3), (5), (6) and (7) of the definition of cost of construction and specifically on such other items of the cost of construction as may be approved by the Commission) shall be disbursed in the following manner and by the following method, but the actual application of the Lessee's contribution to particular parts of the Railroad through the manner and method of its disbursement as provided in this Article shall be without prejudice to the apportionment by the Commission of such contribution to the several Lines of the Railroad for purposes of recaption in accordance with the provisions of Chapter VI of Part Third of this contract.

"Pending the final determination of the amount to be paid by the Lessee under the construction contracts hereinafter referred to, the Lessee shall not be required to enter into construction contracts, under which its aggregate maximum liability (as specified therein), together with the other items of its contribution (accrued or estimated), shall exceed the maximum contribution as herein specified.

"The forms of construction contracts, including specifications, involving the use of any part of the Lessee's contribution, together with the contract drawings therefor, will be prepared from time to time by the Commission. The forms of such construction contracts shall be generally similar to those heretofore adopted by the Commission for the construction of the Lexington Avenue Rapid Transit Railroad already under construction (differing so far as necessary to provide for varying conditions), except that the Lessee shall also be a party thereto for the purpose of disbursing its contribution toward the cost of construction. Each such con-

tract shall specify an amount to be fixed by the Commission, beyond which the Lessee shall not be liable thereunder. Upon the adoption of the form of contract, together with the specifications and contract drawings, the Commission before advertising for proposals shall transmit a copy of the same to the Lessee and within ten days after such receipt or within such further time as the Commission may allow, the Lessee shall return the same to the Commission with its criticisms or suggestions. The Commission shall thereupon consider any such criticisms and suggestions and its decision thereon shall be final and binding upon the Lessee. Proposals for making such contracts shall then be invited by the Commission in the form and manner required by Section 36 of the Rapid Transit Act. As soon as such proposals are received the Commission will consider the same, but the Commission shall not be bound to accept any proposals so received, but may reject all such proposals and readvertise for proposals or may accept any of such proposals as will, in the judgment of the Commission, best promote the public interest, and award the contract accordingly. As soon as the contract is awarded and consented to by the Board of Estimate, the Commission shall transmit to the Lessee three identical originals of the form of contract duly executed by the contractor with its certificate setting forth its action in the premises and stating that the Lessee is required to enter into any such construction contract for the purpose of disbursing part of its contribution toward the cost of construction of the Railroad. The Lessee shall thereupon within a period of ten days cause such form of contract to be duly executed and returned to the Commission for execution by it on behalf of the City and for delivery to the contractor. One such fully executed contract shall be delivered to the Lessee. The Commission shall thereupon undertake the sole supervision and direction of the work under such contract.

"In order to assist the construction contractor to prosecute his work advantageously, the Engineer shall from time to time, as the work progresses, but not oftener than once a

month, make in writing an estimate in duplicate, such as in his opinion shall be just and fair, of the amount and value of the work done and materials incorporated in the work by the construction contractor according to the terms of his contract. The first such estimate shall be of the amount or value of the work done and materials incorporated in the work since the contractor commenced the performance of the contract on his part. Every subsequent estimate except the final estimate shall be of the amount and value of the work done and materials incorporated in the work since the last preceding estimate was made.

"Upon each such estimate being made and certified in writing to the Commission, the Commission shall forthwith prepare and certify a voucher for payment by the Lessee for the proportion of the amount stated in such estimate or certificate, that the amount of the Lessee's maximum liability under such contract shall bear to the total estimated cost to the City, and the Lessee under such contract, less the same proportion of such part thereof as may be retained as security for the due performance of the contract on the part of the contractor under the provisions of the construction contract. The Commission shall thereupon transmit such voucher accompanied by a duplicate original of such estimate to the Lessee for payment and the Lessee within thirty (30) days after the receipt of such voucher shall pay the same to the construction contractor.

"Whenever in the opinion of the Engineer the contractor shall have completely performed all work under his contract, the Engineer shall so certify in writing and in duplicate to the Commission and in his certificate shall state from actual measurements the whole amount of work done by the contractor and the value of such work under and according to the terms of the construction contract and also the balance remaining of the maximum amount for which the Lessee is liable under such contract after deducting all such sums as shall theretofore have been paid by the Lessee to the contractor under the provisions of such contract and any other

sum or sums which the Engineer shall state in such certificate should be deducted. Upon each such certificate the Commission shall forthwith prepare and certify the final voucher for payment by the Lessee of the balance remaining of such maximum amount, or of so much thereof as may be certified by the Engineer, and transmit the same accompanied by the duplicate original of such final certificate to the Lessee. On or before the expiration of ninety (90) days after the receipt of such voucher and certificate, the Lessee shall pay to the contractor the balance remaining unpaid of such maximum amount as stated in such voucher and certificate.

"In addition to the said sum of Thirteen Million Five Hundred Thousand ($13,500,000) Dollars the Lessee shall also contribute the cost of construction of the physical connection between Subdivisions I and II of the Broadway-Fourth Avenue Line at Canal Street and Broadway, which, with the said sum of Thirteen Million Five Hundred Thousand ($13,500,000) Dollars, shall constitute the Lessee's contribution toward the cost of construction of the Railroad. The cost of such physical connection, together with all real estate needed therefor, shall be determined by the Engineer, and included in cost of construction. Such cost or so much thereof as shall be paid by the City shall, with interest thereon, be forthwith repaid to the City upon the requirement of the Commission."

Mr. Moss.— That I might say, Mr. Chairman, is a strip of land running just inside of 38th street, from Fourth to Tenth avenues in Brooklyn, and I think was originally laid out for an outlet of the 39th Street Ferry, operated by one of the Brooklyn companies. One of the companies has a pair of tracks that run down through to the water line. That is, they go there with passenger cars run on their tracks.

The Witness.— Also have been on that portion from Fifth avenue to Tenth.

Q. Has there been any regular passenger traffic on that strip for the last fifteen years? A. From Fifth to Tenth avenues, yes.

Q. Has it not been used by the South Brooklyn Railroad to

switch cars? A. There is a yard there through which they operated the trains coming off the Fifth Avenue Elevated.

Q. Now these two tracks, as I recall it, are lower than that? A. I don't know of any passenger service.

Q. The passenger service was diverted, I think, to the Nassau line fully fifteen years ago. A. It may be, but I don't recall any passenger operation. There may be a few empty cars running down on that line.

Q. You say you have no connection with the negotiations which led to the including of that right of way for $1,000,000? A. No, sir. That was handled by the conferee prior to the execution of the contract.

Q. Did you have any knowledge of the conferences that led to the negotiation? A. Yes, sir. It was publicly known.

Q. You as secretary attended the conferences, did you not? A. No. A great many were not held at the offices of the Commission. I attended some of them.

Q. Were there conferences of the commissioners in your presence in which this matter was discussed? A. Yes, sir. There were a number of times when they discussed whether they should make the connection at either 38th or 40th streets. There was a 40th street arrangement.

Q. It was discontinued? A. It was not used.

Q. There was something built there. It was taken, was it not? A. The Fourth Avenue subway as constructed had a provision for the turnout to go through 40th street.

Q. And work had been done on that structure, had it not? A. Only so far as it was connection with the Fourth Avenue line.

Q. And that work had to be arranged so it would be at a cost of $1,000,000, had it not? A. I don't know how much.

Q. Wasn't it something about that? Does it not look that way in your reasoning to make such a change? A. I should not say it was that much of reconstruction on Fourth Avenue.

Q. Whatever it cost, there was the cost of change from the route that had been established to Fourth Avenue? A. Yes.

Q. Then you swung into 38th street, and by so doing you utilized tracks that already belonged to the South Brooklyn Railroad? A. Yes.

Q. This strip of land belongs to the South Brooklyn Railway? A. Yes.

Q. And was a part of quite a large tract of land? A. A large tract of land.

Q. And the tract of land owned by the South Brooklyn Railway specially included a great yard, didn't it? A. Large enough for cars to turn in and around there.

Q. Are those not the largest yards in the City of New York, those 38th street yards? A. I should not say so, no, sir.

Q. What is larger? A. I should say the Interborough Rapid Transit Company's yards at 155th street.

Q. Will you say that the 38th street yard is the best equipped yard in the City of New York? A. I really don't know.

Q. Will you say it is pretty nearly the largest and best equipped? A. I don't know.

Q. It belongs to the South Brooklyn Company, does it not? A. My understanding was that the title was in the South Brooklyn Company.

Q. Was it not subject to capture by the City under an option? A. I should say that enough of the property outside of the easement line was subject to recapture.

Q. And the City has no yard, no property, upon which to establish a yard any where around that part of the town? A. Not as yet.

Q. And in order to have one it would have to condemn and buy property or contract to buy property there or further down? A. I suppose so.

Q. By making that 38th street change didn't the City subordinate itself to the yard system of the South Brooklyn Railway there? A. Well, as I understand it, the plans for construction were made in such a way as to allow for a joint operation at that point.

Q. But the City subordinated itself to the private ownership of the South Brooklyn Company in its great yard there for such yard facilities as it might not have? A. I don't know how it may have subordinated itself. I don't know that the possession of yard facilities at that point would make such a great difference.

Q. Where else are there any? A. There are some further down.

Q. Isn't it a city line without yards? A. Why, this is property —

Q. Just answer my question. Isn't that a city line without yards? A. Yes. The Commission now has before it the question of the location of yards for both systems.

Q. What work did you do, if any, with regard to the entire matter which resulted in including of that right of way and giving the B. R. T. or the Municipal Railway the credit of the $1,000,000 for it? A. The matter of the use of that right of way included in the contract that provision for the right of way for $1,000,000, and that was a matter that was settled by conferences held by Mr. Wilcox and others.

Q. Didn't the public authorities play right into the hands of the South Brooklyn Railroad in your opinion? A. I don't think that proposition on 38th street, by itself, was particularly advantageous.

Q. It was not advantageous to the City? A. Not in and by itself, no.

that proposition on 38th street, in and by itself, was particularly adcantageous.

Q. Mr. Cravens said it was not, didn't he? A. He pointed out the advantages and disadvantages of the two.

Q. Did he say that the 38th street proposition as between the 38th street and 40th street route was disadvantageous? A. In certain respects.

Q. Has the Commission as yet provided any yard to be owned by the City? A. Not finally on either system.

Q. Have they taken any steps to do so? A. Yes.

Q. Where? A. Well, on the Interborough System there is under consideration the yard at White Plains.

Q. Who owns the property? A. The Interborough Rapid Transit Company.

Q. Who did they get it from? A. I don't know. They have owned it for some years.

Q. Do you know of any property that belonged to the estate of Andrew Freedman that is under consideration for yard system? A. No.

Q. Where else is there a yard to be located? A. It is necessary

to have a yard on the Jerome Avenue line and the Westchester Avenue line. There is a proposition of increasing the size of the yard on 45th street. There must be a yard in Queens, one on the Corona line. There must be a yard on the Interborough System and the Eastern Parkway out near the end of the Lavonia Avenue line. On the B. R. T. system it is necessary to have an increased yard near Coney Island. In Queens the B. R. T., I suppose, the yard at the end of the Coney Island line would be a joint line.

Q. Is that the only one that you think of? A. The Company will, during the period of its operation, have a yard at this point.

Q. What yard will it have? A. Yard to the north of 38th street. That is the yard we have been talking about. That is property north of the easement line.

Q. Have you any information as to the handing to the Freedman estate as to any property that is considered for any of these yards? A. No.

Q. With regard to property at 49th street, have you any information in that regard? A. I know that Mr. Freedman owned property around 149th street station.

Q. Isn't that where the discussion is about as to where the yard is to be located? A. I am talking about the 149th street in Manhattan.

Q. The 149th street property I am talking about is up in the Bronx. Have you any information regarding the ownership by the Freedman estate of any land which is being considered with reference to yards there? A. No.

Q. Don't you believe that the City got the worst of the proposition so far as the amount is concerned, a million dollars allowed for that right of way? A. I think so far as this proposition is concerned, yes. My understanding was that there were half a dozen matters understood between the conferees and Colonel Williams of the B. R. T., and they took them up and settled them.

Q. You think this was thrown in? A. I think that was one of the things they settled at that time. I don't know how they gave and took on it.

Q. What do you think was the value of that right of way? A. I don't know.

Q. Well, cannot you give an opinion? A. I have an appraisal

made by real estate appraisers in Brooklyn of a number of pieces of property over there. They were made prior to the signing of the contract, and included property around this territory.

Q. What does it amount to, according to their opinion? A. The papers don't disclose the basis of the property to be taken. It merely shows a line through that property and the total of those figures on those blue prints is something over $215,000.

Q. For the fee? A. I should judge that was it.

Q. Then the land value was $215,000 according to those experts? A. Probably without regard to the fact that there was railroad property there or not.

Q. By railroad property you mean tracks? A. Yes, sir.

Q. Who was that expert? A. Mr. James L. Brumley.

Q. A well known man? A. Yes.

Q. A man of standing? A. Yes.

Q. When was that opinion rendered? A. He sent this with a letter of October 17th, 1912.

Q. That was before the contract was signed? A. Yes.

Q. Then before the contract was signed the Public Service Commissioners had Brumley's report to the effect that the fee value of the property taken was $215,000, but they signed a contract to take a right of way over the property for a million, am I right? A. It looks that way.

Q. And in order to do that they abandoned the right of way which had been laid out at 40th Street? A. They didn't use it.

Q. And such structure that had been built they tore down? A. Yes.

Q. And it cost a million dollars or more to tear down or change the 40th Street construction in order to get to 38th Street? A. No, I wounldn't say that.

Q. Do you know of any reason why the public authorities surrendered to the Brooklyn Rapid Transit Company in order to allow them the credit of a million dollars upon the $13,000,000 that they were to contribute by taking property, which had already been appraised at $215,000 and which, in order to take that, they had to abandon a structure and plans to the loss of the City in considerable amount? A. All that I can say is that is only one of

a number of matters that was settled between the conferees and the company.

Q. Who were the conferees? A. Mr. McAneny, Mr. Wilcox, President Williams of the B. R. T.

Q. Do you know whether the allowance to President Williams of $100,000 was discussed at or about this time? A. No.

Q. Do you know how the million dollars was given into the company that owned the property? A. No.

Q. The property was owned by the South Brooklyn Company, wasn't it? A. The deed runs from the South Brooklyn Railway Company to the City of New York.

Q. And the allowance of $1,000,000 was made to the Municipal Railway Company, or really the South Brooklyn Railway Company? A. Yes.

Q. And the South Brooklyn are owners of the subsidiary companies of the B. R. T. or the Municipal Railway Company? A. Yes.

Q. Do you know how that million dollars was given back to the South Brooklyn Railway Company? A. No.

Q. Do you know whether the South Brooklyn Railway Company made the contribution which was the basis for the $100,000 which was paid to Colonel Williams? A. No.

Chairman Thompson.— We will take an adjournment now until tomorrow morning, March 11th, at 11 A. M.

The meeting thereupon adjourned until Saturday morning, March 11th, at 11 A. M.

March 10, 1916.

MUNICIPAL BUILDING, NEW YORK CITY.

Meeting of Thompson Committee to investigate the Public Service Commission of the State of New York.

Meeting called to order by Chairman Thompson at 11:35 A. M., a quorum being present.

Chairman Thompson.—There will be an executive session of this Committee at 2 o'clock to take up the question of a preliminary report to the Legislature.

T. P. SHONTS, being recalled, testified as follows:
Examined by Mr. Moss:

Q. Mr. Shonts, when you were here before, and I was not here at that time, I think you were talking about commitments and obligations. I want to ask you considering those commitments and obligations, did they refer to commitments and obligations of yourself, or of the Interborough Rapid Transit Company, of which you are president, in reference to this subway construction contract, and can you tell me whether there were any commitments and obligations ni the $500,000 that went to Mr. Morgan? A. Not beyond that stated in the resolution which we passed at the time. These minutes were adopted at the time the authority was given to pay them.

Q. You state that there were no commitments and obligations in the transaction with Mr. Gillespie, in his contract? A. How do you mean?

Q. Either from you or from the railroad company? A. No.

Q. Now commitments and obligations are somthing which we have not yet defined, but if you will take this view of it, I will put it into the form of a question. Have you any knowledge or any information as to the payment of any sums by commitments or obligations, or any other way, to any public official in connection with the railroad matters? A. No, sir.

Q. No information? A. No information.

Q. You remember that there were some members of the City government who had opposed the scheme of rapid transit and your company was interested in it, do you not? A. Yes.

Q. Were there any commitments or obligations incurred as to any official of the City government who had opposesd your scheme and who afterwards came over? A. No, not to my knowledge.

Q. What about your information? A. Not to my information.

Q. You haven't a very good memory have you, Mr. Shonts? A. In some things very good. As to names not so good.

Q. As to records and facts you have a good memory? A. Yes.

Q. Doesn't your memory as to facts sometimes fail? A. I do not think so.

Q. Do you think you might forget something on the matter of commitments and obligations? A. I don't think so.

Q. I want to refer you to some testimony which I find upon the records.

(Counsel reads from record.)

Mr. Moss: Then follows about Mr. Grout, and then it recurs to Mr. Shonts.

(Counsel reads from record.)

Q. Well, now, is that your memory today? A. No. My memory has been refreshed by things that have been brought to my attention since. I remember more than I remembered on that day, because I have seen certain data that has come to me.

Q. What else do you remember? A. I remember that since I received a communication in which Mr. Towns reminds me that at the time following the election of Mr. Gaynor and city officials on a platform pledged to city construction and operation of the subways, that I had retained him to come into our office and study our views of the situation based on our records of the cost, etc., and to undertake to convince Mayor Gaynor that the real interests of the city would not be forwarded by the construction of the so-called tri-borough route. That had escaped my mind when I testified before.

Q. Do you say you had a communication from Mr. Towns to refresh your recollection? A. I am not sure. I received a commmunication from either Mr. Towns or Mr. Grout, from either one of them.

Q. That was a communication received since you were on the stand? A. I had it here while I was on the stand.

Q. You make that amplification of your former testimony, but otherwise it stands? A. Yes.

Q. Had you ever seen Mayor Gaynor before you saw him down there at St. James? A. Yes.

Q. Where had you seen him? A. In his office in the City Hall.

Q. Well how did you come to approach him? A. I wanted to pay my respects after his election and inauguaration as mayor as I thought it was my duty.

Q. What other time had you seen him? A. I think that's all.

Q. You met him at some public functions? A. I don't remember of any now.

Well might you have met him at some public functions? A. Yes.

Q. And when you paid your respects to him he knew you were president of the Interborough Rapid Transit Company? A. Yes. I explained to him that it was a friendly visit that I made because I was the executive head of the most important transit corporation in the city of New York.

Q. So that you were able to approach him? A. Yes.

Q. You didn't get anyone to introduce you? A. No.

Q. Whose buggy was this that you rode down to St. James in? A. It wasn't a buggy. That was an automobile.

Q. We have not found out yet what kind of an automobile it was.

By Chairman Thompson:

Q. Was it a Ford? A. I don't remember.

Q. But you knew perfectly well that you were going to see the mayor and that the mayor knew you were coming? A. I understood so.

Q. Where did Mr. Town join you? A. Mr. Town joined me here in New York.

Q. Didn't you call for him? A. I don't remember.

Q. Didn't you call for Mr. Towns at his home? A. I don't remember.

Q. Now just think, Mr. Shonts. A. I either called for him at his home or met him some other place.

Q. Where did you go before you went to St. James? A. The only stop that I remember making was at Mr. Hawley's house at Babylon.

Q. Who is Mr. Hawley? A. Mr. Hawley was a member of the firm of Hawley and Davis and — now I am not sure about this, but I think at that time he was one of our directors. I am not sure about that.

Q. He was connected with the mayor at that time? A. I do not know. He was afterwards, but not then.

Q. Isn't it true that through him you connected yourself with the Interborough Rapid Transit Company? A. Oh, no.

Q. Wasn't he the means of your becoming the president of the Interborough Rapid Transit Company? A. Oh, no.

Q. What did you talk with Mr. Hawley about? A. I think I told him that I was on the way to St. James to see Mayor Gaynor, and that I hoped to convince him that the platform on which he had been elected would be a very expensive one to the city of New York.

Q. Was Bablyon on the way to St. James? A. I don't know enough about the territory down there to tell you. I don't know. St. James, I think, is on the north shore.

By Senator Lawson.— St. James is on the north shore and Babylon is on the south shore.

By Mr. Moss:

Q. You went quite away out, didn't you, to get to Mr. Hawley, quite a way out of your direction? A. If I was going on the shortest route, if this was my object, I did.

Q. Were you making some arrangement with Mr. Hawley, getting his advice or making some arrangement with him in anticipation of your visit with the mayor? A. If he was a director of the Interborough Rapid Transit Company, which fact I have forgotten whether he was then or afterwards, I probably had consulted him as to the wisdom of laying all our cards on the table and asking the mayor to send someone in whom he had confidence to study the situation.

Q. Was Mr. Hawley a strong financial man? A. He left quite an estate.

Q. And he was in touch with big finances? A. Yes.

Q. You talked with him about financial matters relating to the company, did you not? A. Not often.

Q. But you had frequent talks with him, did you not? A. I don't remember how many. I suppose I did. I talk with all our directors. Mr. Hawley was not a large owner or very large factor in the Interborough Rapid Transit Company.

Q. Then why did you confer with Mr. Hawley on that occasion? A. As I say, if he was a director at that time I probably wanted his advice.

Q. What other directors did you confer with? A. I presume most of our executive committee.

Q. Did you confer with Mr. Freedman? A. I suppose so. I probably did.

Q. Now that is why I am asking you, Mr. Shonts. That is why I am asking you about your memory. I didn't ask you about Mr. Freedman's opinion. A. You asked me if I could remember back about forty years, then I could say that my memory was not good.

Q. I am not asking you to remember back forty years. I am asking you about a situation only a few years back concerning Mr. Towns' visit to the Mayor, and I think Mr. Shonts, that you should be fair in your answers. A. I am trying to answer your questions thoroughly and promptly.

Q. I told you once before in reference to this, how the Committee felt about the matter, and I think that you testified that this was one of the extraordinary services that you performed for this railroad toward getting this Dual Subway contracts. A. I remember the Chairman was kind enough to say he thought it important enough.

By Chairman Thompson.— You and I got together on that.

By Mr. Moss:

Q. That being the most important thing you did in rendering an extraordinary service, for which they voted you a large consideration after the contracts were signed, then don't you think your memory should be pretty good about the transaction? A. I want to say that I am trying to answer, but to say who I talked with on each subject and when and where — of course I cannot do that.

Q. How did you happen to forget about Mr. Hawley when Mr. Colby was talking to you in his nice smooth way? A. I would have forgotten about it today if it hadn't been that I was refreshed by my memorandum.

Q. You mean the memorandum about your talk with Mr. Hawley? A. I think so.

Q. Was it important enough for you to put it on a memorandum? A. Well, now I am not sure it was in the form of a memorandum.

Q. Is it in the memorandum? A. I don't know.

Q. How does it come that these facts come to you now, Mr. Shonts? A. I have been thinking about the testimony since I was here that day.

Q. Mr. Town is in the room now. Did that bring it to your mind? A. I have not seen him.

By Senator Lawson:

It took you twenty-five miles out of the way to get to Babylon? A. That may be right.

Mr. Moss (continuing):

Q. Have you got a memorandum of the conversation you had with Hawley? A. Not except as I tell you.

Q. Did you have a memorandum of the conversation at all? A. Yes. I have.

Q. Did that conversation in any way touch the subject of money? A. It did not.

Q. Is Mr. Hawley living or dead? A. He is dead.

Q. Had you been talking with Mr. Freedman before you started on your journey to Mr. Gaynor's house? A. I don't know when I had seen Mr. Freedman last before going to Mr. Gaynor's house.

Q. Is Mr. Freedman dead or alive? A. Dead.

Q. Did Mr. Town see Mr. Gaynor after you saw him? A. Not that I know of.

Q. Didn't Mr. Freedman tell you he had? A. No. My recollection is that Mr. Freedman and Mayor Gaynor were not good friends.

Q. Didn't Mr. Freedman tell you he had seen the mayor? A. Not that I recollect.

Q. Will you say that he didn't? A. I will say that as far as I recall.

Q. You mean that is your best recollection? A. Yes.

Q. Didn't the mayor at that interview announce his change of heart? A. No.

Q. How soon after that interview did you learn of his change of heart? A. It was some months after that. The important thing in that interview was my desire to state our position to the mayor and to say to him that there must be some person in this city that he had confidence in and who was competent to judge of a transportation matter of that kind, and to say that if there was such a person, that I wished he would send that person or those persons to our office and examine our books and go over our files, see what progress we were making, see what the costs were and see if whoever they might send would not agree with us as to the wisdom of abandoning the so-called tri-borough route.

Q. He didn't name the person that he had confidence in? A. Not that day. Afterwards he sent Mr. Ingersoll, who I think had been chief engineer of the New Haven Railroad and Mr. Kingsley Martin, whose father had been bridge commissioner, and I think he was afterwards bridge commissioner, to my office, and I did just exactly what I told Mayor Gaynor what I would do. I sent for our chief engineer, Mr. ....., and I said "I want you to show every record you have to these gentlemen," and they spent months studying the situation. I never saw their report. I judged from their talk with me at various times during these months that they were working on thorough lines. That is, their minds were fair and I inferred that their report was favorable to our contentions.

Q. Was anyone else converted from the position of antagonism, anyone else in the city government? A. I can't think of anyone now.

Q. Wasn't there another member of the city government who was very antagonistic to your proposition and who finally voted for it? A. There were some antagonistic.

Q. Name them? A. Mayor Mitchell was never friendly to the Dual System as I understand it.

Q. Did he finally come over? A. Not that I know of.

Q. Name someone that was opposed and did come over? A. I don't know of anyone that was opposed and did come over.

Q. Wasn't there any other member of the city government? A. I can turn that around and answer that one man did agree with us that he was in favor of the proposition, I think in July, 1911.

Q. Who was that? A. Mr. Prendergast. He was for it, and the next thing we knew he changed his mind and voted against us.

Q. What did he do finally? A. You mean on the last contract?

Q. Yes. A. Voted for it.

Q. Were there any other members of the city government who changed their opposition as markedly as the Mayor and the Comptroller did? A. I don't remember.

Q. Did the Mayor and the Comptroller change simultaneously, or about so? A. I don't remember that the Comptroller was against this proposition that I refer to of July, 1911. He was rather I think favorable to it, and when we reached an agreement at the Metropolitan Club on that date, he expressed himself in favor of it and he afterwards changed his mind.

Q. And then he came back? A. That was the end of that proposition.

Q. The next time when he came over finally, he and the Mayor came over again, didn't they? A. Well, that was the end of that proposition. Then our attitude was that it was useless to continue negotiations.

Q. Well, now, Mr. Shonts, there was a favorable report made in 1912, wasn't there? A. Yes.

Q. May 22d, 1912? A. I think so, yes.

Q. Was the Mayor on that? A. I don't remember. I suppose he was.

Q. Was the Comptroller on that? A. I cannot testify of my own recollection.

Q. You don't mean you forget the votes of the city council and how it stood? A. Yes, I do.

Q. Don't remember how the vote was that awarded those contracts at the final analysis? A. As I recall it, the only vote in the Board of Estimate and Apportionment that was against this final award was the Mayor.

By Chairman Thompson: Three votes.

A. Yes.

By Mr. Moss (continuing):

Q. On January 27, 1912, there was a new offer by your company? A. Yes.

Q. On April 22d you saw the Mayor at St. James, didn't you? A. Yes.

Q. April 22d, 1912? A. Yes.

Q. And on May 22d, 1912, there was a report in your favor? A. If those dates are right, that is true.

Q. Well, is there any doubt about the dates? A. No, I think you are probably correct, Mr. Moss, in your dates.

Q. You have already testified that the date of your trip to St. James was the 22d of April? A. I think I said in my testimony that I didn't know the month. I was thinking it was in March. I know it was cold.

Q. Well, anyway you know that on January 1st the Mayor was elected in 1912, don't you? A. Yes.

Q. Now, Mr. Shonts, don't you think that your memory is slightly deficient? A. I don't remember dates and names very well.

Q. Wasn't there a favorable report after you visited St. James? A. That is so.

Q. How long afterwards? A. I don't know. This Committee was appointed, they worked several months, and I don't know whether it was one year or two years or how long it was between the time that I saw the Mayor at St. James. I saw him, I think, in the March following his election, if some one will tell me when that was.

Q. That was in 1910? A. Well, I saw him in March, 1910. That's the best of my recollection.

Q. That's the time you paid your official call? A. It was when I went down there following his election.

Q. Now can you remember any conversation you had with Mr. Freedman regarding your call on the Mayor before you went there? A. Possibly I told him about it as I told the whole board and the executive committee. I probably read them a copy of my memorandum.

Q. Do you remember when Mr. Freedman was in Europe, what year that was? A. No.

Q. You remember he did go to Europe? A. I know that he had been in Europe, but how often I do not know.

Q. Do you know whether Mr. Freedman had any bank accounts in London? A. I do not. I never heard of it.

Q. Now, I would ask Mr. Shonts to just step aside temporarily.

M. TOWNS, being recalled, testified as follows:

Examination by Mr. Moss:

Q. He wrote an article in the magazine in which he expressed his views about private capital exploiting public franchises, did he not? A. Well, he wrote many letters.

Q. He wrote letters, did he not, which found their way into the public press? A. He wrote many letters. I don't know all the letters which he wrote, but he wrote many. That is well known, I think.

Q. Do you remember a letter which he wrote and which appeared in the newspapers on July 20th, 1911, in which he spoke of damnable rascalities? A. I don't recall that letter. If I saw it I might remember it.

Q. Well, I have in my hand a copy from the New York World, I think July 19th, 1911, addressed to the people of New York City. I will read it.

"To the People of New York City:

"I regret exceedingly to see this thing being done. It is needless. It is a wrong and a humiliation to this city. It was not in sight a few months ago. The city is being overreached by a few financiers of great ability. They have actually induced city officials to agree to subsidize the compaines to equip and operate, as though the city were in such evil case as to require that to be done in order to get necessary subways. The city is put in all of the money for construction of subways for the Brooklyn company, according to the scheme now ready. That company is put in nothing for subway construction. The proposed agreement is that the com-

pany is to get 9 per cent., or a little over, on its elevated railroad capital or value, which is about $40,000,000, before the city is to get even the interest which it will have to pay on its corporate stock issued to raise the cost of construction.

"The Interborough company is to put in one-half of the cost of construction of the subways which go to it, and the city the other half, according to the agreement being made. The proposed agreement with the Interborough is that it is to get 9 per cent. on its present capital stock of $35,000,000 and 9 per cent. on the additional capital it is to put in for construction and equipment before the city is to get even the interest which it will have to pay on its corporate stock issued for construction. A few months ago the Interborough company was offering to put one-half of the construction cost and all of the equipment cost on even terms with the city, except that the interest on its bonds for new capital should have precedence over the interest on the city's corporate stock; and that they would have waived. This has been gradually frittered away and the present proposed agreement substituted. The case is much worse than this bare statement shows. Why pay this 9 per cent. preference to the Interborough?

"In my article in the Outlook one year ago on subways I explained all of that and showed how this matter of 9 per cent. would be a constant obstacle to fair dealings by the city with the Interborough company for subway construction and operation. The case is exactly this: The shares of the said capital stock of $35,000,000 of the Interborough company were transferred several years ago to a holding company or trust, which is the usual obnoxious term. I refer to the Interborough-Metropolitan business company. It is not a railroad company. The Interborough Railway Company thus became locked fast in the grasp of such holding company, which straightway 'financed' this $35,000,000 of stock by issuing $70,000,000 of debentures or bonds against it. These bonds are at 4½ per cent. interest, so that it takes a 9 per cent. dividend on the said $35,000,000 of stock to pay such interest.

"This 9 per cent. on the stock is necessary to prevent a default of interest on the said bonds, and has heretofore been paid regularly. If it should be stopped the holding company or trust that did this nefarious watering or inflating would become insolvent. I never expected to see the city officials give their aid to safely intrenching and perpetuating such baneful financing as this, from which our country has suffered such moral degeneration and material wrong. The street surface railroads in Manhattan and The Bronx were financed in the same way, only more so, and were in the grip of this same holding company or trust. But the financial pyramid laid on them by such methods tumbled to pieces about five years ago. The companies became bankrupt and went into the hands of receivers, and are there yet, thousands of honest persons being ruined by the smash-up.

"The present action of city officials is now saving the Interborough Railway stock inflation which I have described from meeting the same fate. The Brooklyn inflation which is being intrenched and saved in the same way, is even worse. This Brooklyn Rapid Transit Company, instead of being a railroad company, as its name deceives many to suppose, is not a railroad company, but only a stock-jobbing holding company or trust. By stock ownership and a system of long leases, namely, of 999 years, it controls substantially all of the railroad companies in Brooklyn — surface and overhead. This inflation was organized under the late ex-Governor Flower and two or three others who are in it yet and are now overreaching city officials and craftily getting hold of the city's credit to perpetuate such inflation.

"Flower and his associates ran their holding company stock up to 137, and then down it dropped to 26. It was, in fact, worth nothing. Flower died suddenly, and the inventory of his estate showed that he had completely unloaded the stock. Many thousands were basely swindled. The thing was rehabilitated at about $60,000,000, and has been growing larger ever since. Its career is well known. It remains to be said that annual dividends as high as 10 per cent. are guaranteed to be paid to the underlying actual railroad companies, con-

trolled by leases of 999 years by the said holding company or trust. And this financing, bound very soon, if left alone, to fall in a heap, as it did in the case of the roads of Manhattan and The Bronx, is now to be saved and perpetuated by aid of the city's credit and co-operation.

"We can have subways without entering into such alliances and contracts as this. It would be far better for the city to operate its subways than to do what it is now being committed to. It now under the law builds and owns its subways. Let it operate them also sooner than lend its aid to the saving and perpetuation of a generation of past stock swindling. But it does not need to operate them. Proper operating contracts can be made, as we set out to do at the start. I am only too willing to accept the mature views of competent persons instead of my own at all times, but this is a case in which a sense of common, everyday morality forbids that I unite in what is being done.

"I have too long written and spoken against such damnable rascalities to now turn about and ally myself as Mayor of this great and intelligent city with them. I shall go out of office without putting that stain on my name.

"W. J. GAYNOR, Mayor."

A. My activities were terminated in May, 1910. After that I neither gave any advice nor was I consulted and in January I had some differences, that is, I felt aggrieved about some appointments that Mayor Gaynor had made and we had no further associations. I think Mr. Shonts is mistaken about the date he visited Mayor Gaynor.

Q. Are you able to fix the date? A. Yes. I have a memorandum of it. It was on the 24th day of April, 1910, and on a Sunday.

Q. Now, I wish, Mr. Town, you would tell us how that meeting was arranged. A. I will tell you my recollection of it. There had been a previous attempt for Mayor Gaynor and Mr. Shonts to meet and discuss this thing. I was never able to state the matter perhaps as clearly as Mayor Gaynor saw things, but it finally arrived at a point where the mayor was haggling over a question of about

1 per cent. of what the earnings or the returns to the city would be. I have forgotten now which. He said if he could secure that, why he thought it might be the best thing for the city. At one time his attitude was so antagonistic, so far as I know, that he threatened to issue five dollar bonds and sell them over the counter of the City Hall. He was informed that if he did that the financial interests would probably obstruct the next loan — the next City loan — when it came time to borrow money — which frequently came — and that they would find difficulty; and I think after looking the field over, he became convinced of that. At any rate I nver heard any more of his plan of selling the bonds at five dollars over the counter.

Q. What arrangements were made regarding the bringing about of the meeting of Mayor Gaynor and Mr. Shonts? A. Well, the meeting, as I stated, seemed to have been desired by both parties.

Q. You spoke to both parties? A. It would be better to say that they spoke to me, and it was first arranged tentatively that Mr. Shonts should visit the Mayor at his house. That proved very practical, but not desirable, as I remember, and then St. James was fixed upon. The Mayor was living at that time without any menage.

Chairman Thompson.— I am interested to find out the meaning of that word, menage?

The Witness.— I mean he was living there without any household and sleeping there without his servants.

Q. He would go down on Friday and spend the week-ends, I presume, and walk about the hills alone and that was where he wanted to meet Mr. Shonts? A. I know the way I fixed it is I went down to Morton and there was a particular brand of champagne that the Mayor liked.

By Mr. Moss.— What was that brand? A. He had made its acquaintance at some function on Fifth Avenue, and he wanted to introduce me to it, and he finally told me that it was Paul Rosha, '90.

Q. Is there any more of it left? A. I finally found it at Morton and that was on the Friday before we went down. I have the

bill. I paid it. When we went down there, Mr. Shonts and myself, who knew about the vintage, were very anxious to know when the old fellow would send out a portion of it, and we waited and waited, but none ever came. That is the way I fixed the date.

Q. Was there anybody else with you? A. Oh, yes.

Q. Who was it? A. Mr. Campbell.

Q. Who is Mr. Campbell? A. He is a friend of mine.

Q. Does he belong to the railroad? A. I wouldn't say that he belonged to the railroad.

Q. Well, does the railroad belong to him? A. It might.

Q. He is treasurer? A. Yes.

Q. Did he go down to St. James, too? A. He went with us on that occasion.

Q. Did Mr. Campbell also go to Mr. Hawley's? I don't think that we did. I don't know. I have heard Mr. Shonts say that he went to Hawley's. That recalls that we stopped at some place, Babylon or between Babylon or Bay Shore. I know I spent my time looking at the beautiful swans that were upon the pond.

Q. You hadn't had any champagne up to that time? A. That was many miles away.

Q. Who proposed going to Mr. Hawley's? A. I could not tell you. All I know is that when we entered the gate, Mr. Shonts alighted and I alighted. I remember waiting there for his return.

Q. Did you confer with Mr. Campbell regarding the services that you were to perform in endeavoring to bring about an arrangement? A. You see, originally Mr. Campbell was a friend of mine, and he came to my office one day long before Mayor Gaynor was elected and I think it is due to him and Mr. Shonts for me to state this. He came to my office and he said that I was pretty good at advertising, and paid me various compliments, and he said, "We are up against it." He said, "I have tried to make our people think that perhaps you could do them some good." He said, "We would like to have some public opinion attracted to our view of the case," I said, "I will think about it." I told Mr. Campbell that this would entail an expenditure of $25,000 to $50,000, and that was abandoned. In the meantime Mayor Gaynor was nominated and eventually elected, and so nothing came

of the publicity. I haven't had any service except that. Now, I never at that time — I haven't separated this company from any money. I asked for no retainer.

Q. Is this Mr. Campbell the gentleman who for twenty years was in the Comptroller's office? A. I knew him as deputy chamberlain.

Q. Had you been in conference with Mr. Campbell, the treasurer of the Interborough Rapid Transit Company, at the time you were arranging with Mr. Shonts to meet Mr. Gaynor? A. Most of the communications that I received were through Mr. Campbell. As I say, I never met Mr. Shonts but three times. My recollection is that the only time I ever met Mr. Shonts was immediately before arranging the interview. After the interview, or on another occasion, I think just about the time that Mayor Gaynor announced his favorable attitude, I think I met him also.

Q. Mr. Towns, don't you think that the Interborough Rapid Transit Company's offer of 1910 was more favorable to the City than this later offer? A. I am not an engineer.

Q. Well, just give us your opinion. A. That is what I tried to convince the Mayor; that the plans of the Interborough Rapid Transit Company were satisfactory. The agreement between Mayor Gaynor and Mr. Shonts was the one most favorable to the City, in my opinion.

Q. Don't you think that the offer which was made after your visit to Mayor Gaynor at St. James, was less favorable to the City than the offer of 1910? A. As I understand the terms, and perhaps I can make myself understood. I don't think it was an offer that Mr. Shonts made. It was a statement of the limit the Company could go in building this road and the last time I heard about it they were half a cent apart. That is, in the percentage. How that was ever adjusted, I never learned. But I kne wit was adjusted, because I was told so.

Q. Did the plans of the Interborough Rapid Transit Company become more favorable to the City after you saw Mayor Gaynor with Mr. Shonts, or less favorable? A. Mr. Shonts will know. I understood as a man on the outside, my understanding was that when Mr. Shonts left Mayor Gaynor on that day they were half a cent apart.

Q. That's the best you can answer my question, is it? What do you say to that? A. I think the present plans were much less favorable to the City than the one that Mayor Gaynor and Mr. Shonts agreed upon tentatively.

Q. You state there was a difference of half a cent. That related to the adjustment? A. Of the percentages to be paid. That is half of one per cent.

Q. Did you present any study of your work to Mr. Gaynor? A. It was not my study. Whatever papers or reports I had were handed me by the Interborough Rapid Transit Company.

Q. Didn't you make any studies yourself? A. No, not any detail study.

Q. You simply transmitted theirs? A. Yes, and sought to explain them.

Q. Well, Mr. Shonts mentioned some studies that had been prepared by you. A. Yes, and those were submitted to the Mayor.

Q. By you? A. Yes. I submitted many reports. I never call those studies. I should call them plans and statements.

Q. Now you were of the opinion that you had rendered services for the Interborough Rapid Transit Company, weren't you? A. I'll tell you how that was. When I finished some considerable time afterward, I think I mentioned to my friend Mr. Campbell that they should send me a check for what they thought my services were worth. Up to that time I had never mentioned any sum whatever. It was then stated to me that that was not the way they did. They said I should make out a bill and present it. So I made out a bill for $10,000, which I considered my services were worth, considering the time I had spent on the matter. They gave me $5,000, and I was content with it.

Q. Had any opinion been expressed upon the value of your services by any competent person before you rendered the bill for $10,000? A. I don't know about that.

Q. The suggestion has been made and that's why I ask the question, that your services were not real services in that there was something peculiar about them, and I want to have you generally tell us all that you can about the value of those services, and I think you are entitled to tell all that was said about that. I ask you if there was any statement of opinion made by anyone who

might be competent to express an opinion as to the value of those services? A. I never knew that the Railroad Company disputed the value of my services except that they divided my bill by two. I told you how it was made out and I didn't know that anybody questioned the value of my services.

Q. You didn't present that bill for about two years, did you? A. If you will show me the date of it you will find out. My bill I think was paid within five days of the date, and paid on the day it was stated.

Q. Well, that was about two years after the services were rendered. Didn't you have a conversation with someone who was competent to express an opinion on the value of your services before you sent in a bill for $10,000? A. I remember an occasion when an opinion was expressed, but I didn't take it seriously.

Q. Please state what it was, whether it was serious or not. I think it is due you to have it. A. It is so preposterous that I have to even state it.

Q. With that prelude I think you need not hesitate. A. It was on the morning after the thing, as I understand it, had come out that the contract, the minds of the Mayor and the Railroad had met, and that there were enough votes there to put this thing through. So we walked over the bridge.

Q. You mean you and the Mayor? A. Yes. We talked about the matter and we got there in front of the boot-black stand and the Mayor stopped and said suddenly, "What are they paying you for this?" I said to him just as I have stated to you, that I never made any bill, and I had never thought of any charge, but I thought they would pay me as large as the only client that I had at that time paid me for services, and in that case my bill would be $10,000.

Q. You were figuring at $200 a day? A. If that is what it amounts to.

Q. Well, what did he say? A. He stopped, and he said it should be $750,000. I have given them a principality. It impressed itself upon my memory, but it was so ridiculous I dismissed the thought from my mind.

Q. From your standpoint as a lawyer rendering a service to the Company, you were satisfied with $10,000? A. I should have been very much satisfied, yes, sir.

Q. And you did not follow the suggestion or advice or whatever it was? A. I did not.

Q. Did you discuss with him the meaning of the words "I had given them a principality?" A. No. I thought that was perfectly apparent.

Q. You say it was perfectly apparent? A. It was to me.

Q. So apparent that it does not need to be discussed in your view. What do you think the Mayor meant by that? A. It might have been a message and might have been a trap. In either case I didn't care to fool with him.

Q. Did you tell the Mayor that you had sent in a bill for $10,000 for that? A. No.

Q. That is the only conversation you had about it? A. That is the last time. My connection was terminated in a peculiar manner. I was in the habit of going down to the office or their coming up to see me. I went down one day as usual to see if there was anything there, and I was greeted with the remark "You have been superseded."

By Chairman Thompson:

Q. Who told you that? A. Mr. Campbell told me that.

By Mr. Moss:

Q. He didn't say who had superseded you? A. No, he didn't. I understood one party, and I have heard the name this afternoon.

Q. Who was that? A. Kingsley Martin. Kingsley Martin was an engineer, and he had these details. I am not an engineer, so that I could not explain the details intelligently. So they must have considered it best to have an engineer.

Mr. Moss.— Do any further questions occur to you, Mr. Chairman?

By Chairman Thompson:

Q. You were talking about the Mayor issuing $5 bonds. You say that the Mayor threatened to issue $5 bonds and that the financial interests threatened the next City loan. What do you mean by that? A. I didn't say that they did. I simply said that the Mayor was so opposed to this that he became impressed with the plan of marketing bonds as low in denomination as $5 and building this road by public subscription.

Q. In other words, he was going to sell them direct to the people whose money was deposited in the banks that were controlled by Mr. Morgan, when he handled the bonds, is that correct? A. I don't know who he was going to sell them to. My idea was that he was trying to get the very best terms from the Company at that time, getting them to give the very best terms. I conveyed this information to them and then I argued with him, whether of my own volition or not, I don't know, but I know that I told him he would find it very difficult perhaps to sell the next issue of city bonds.

Q. It was you then who told them that the financial interests would interfere with the next issue of the city bonds? A. I told him that.

Q. What did you mean by the financial interests? A. I mean those people who have the money and sinews and things that get.

Q. Name a few of them? A. I haven't the pleasure of their acquaintance. Do you mean the people that own the money or the people that have control of the institutions wherein the money was deposited?

Q. Did you tell him who opposed? A. I meant that valuable —— to the community whose habitat is Wall street and the adjacent neighborhood, who are passing through life with one virtue and a thousand crimes.

Q. Who was that? A. I don't know.

By Mr. Moss:

Q. Mr. Towns, you are an important lawyer here and you are pretty well acquainted with this town, and you were talking with the Mayor. He understood what you meant? A. Yes. All things are pure.

By Chairman Thompson:

Q. You understood what you meant to-day by these loans, didn't you? You knew it was a real, concrete thing that you were talking about, didn't you? A. It was an argument and not concrete by any means. It was simply an argument that might operate upon me as to the patriotic Mayor to look out for his City's interest.

Q. Well, Mr. Towns, the people that probably would buy the

$5 they were the people that had $5 that belonged to them, were they not? A. Yes, until somebody took it away from them.

Q. What do you mean by the financial interests of 1910? A. There was only one financial interest in the State of New York.

Q. What was that? A. Mr. Morgan. He dominated everything and still he was the accepted authority on finance. He was the dominating power of Wall street as we poor people accepted it. Mothers stilled the cries of their babies with the mention of it and every man has got the ambition that he might get a little of it.

Q. That was the state of the Mayor's mind and the state of your mind when you talked about that line? A. I just told him the case that I thought was apparent. That is, if he sought to make the City a competitor to private interests that had invested their money and wished to take care of it. That is, if he came as a competitor and as a representative of the City they would take their revenge. They cannot do anything to anybody that has got money. That is one of the lessons of poverty.

Q. Mr. Towns, did it occur to you that the reason your bill was cut in two was because you made it so modest? A. I was what I might call the benefactor of my bill. As I say, about two or three years intervened before I got it. I got very nervous. So I went to see my estimable friend, Mr. Nicoll, and he gave the word and it was paid very promptly.

Q. But at the cut rate? A. Yes. It was the most unkindest cut of all.

Q. You see what had been accomplished by your patience with the Mayor's grouch? You see the people enjoyed it and you considered your modest bill of $10,000 cut in two. Were you not almost hurt that you had not rendered it for 750,000? A. No, sir. I never entertained that regret.

Q. You could have stood it if they cut that bill in two, could you not? A. I could have stood most anything.

Q. Well, the large bill would have been very inviting, would it not? A. It never occurred to me. I never took it seriously.

Q. Don't you remember the time when Mayor Gaynor was strongly against these contracts because the best contract which he and Mr. Shonts had made had been turned down? A. I remember now that that was the occasion he was strongly against it and the

Mayor was sometimes serious and sometimes not. He was a great admirer of Mr. Pickwick, and I did not know whether some of his expressions were meant for anything than the language conveyed. He had reasons to be outraged.

Q. Did you know that he mutilated the contract? A. No, I don't. Now in these transactions when it came to drawing the contract, I had nothing to do. I had nothing to do with these contracts. When they were going over the contract made by Mr. Shonts and Mr. Gaynor, which would have been beneficial to the City, various contentions were expressed, and I know that one of them was allowing the Interborough Rapid Company to have preferentials on the income before the City could get anything for many years. I remember that was one of the things that the Mayor and Mr. Shonts could not agree on.

Q. Have you been able to recall what the difference of half a per cent. was? A. This is mere summary and rather indistinct, and should not have the value of testimony. There was some talk about it a long time back. It was said that there was a limit of profit in this business, then there was an amortization.

Q. This contract was to be amortized and it was upon that branch of the conversation that this was based? A. That is my recollection.

Q. They wanted to allow half a cent and he wanted a cent? A. I think so. I think the Mayor said for a cent I will approve it. I think Mr. Shonts went down about that time. Mr. Shonts was being heard, as I understood, by the financial interests that this matter should be terminated. We must have some termination.

By Mr. Moss:

Q. What did Mr. Shonts say to you on the way home from St. James? A. He didn't say anything.

Q. There was no reference to the conversation with the Mayor? A. No. He simply said that the Mayor was a good walker. I have been asked whether I introduced Mr. Shonts to the Mayor. I might say that they became attached very readily. They left where we were and as soon as they came within each other's reach.

Q. In other words, elective affinity? A. Mr. Shonts was neither reticent nor was he loquacious, about it. He talked about everything but he didn't tell me about the outcome of the matter with

the Mayor. I am under the impression that he said that he had gone over the matter and that there was still half a cent difference. I am under that impression. How I got it I don't know.

Q. Now who called for you that day, Mr. Towns? A. I have always been under the impression that he called at my residence on the Sunday we went down. That's my recollection. You see you cannot be positive about these things.

Q. Now, Mr. Towns, some time ago, and I just want to refresh your recollection for a moment, you had been anxious to bring something to pass for your clients. You had met the president and the Mayor together and you were going away. Now I would like to have you search your recollection and tell us in your own way all that you can recollect between you and Mr. Shonts on the trip down to the Mayor's office that you had. A. Don't you think that would be a great repetition?

Q. I didn't hear what Mr. Shonts said. A. My recollection is that Mr. Shonts called at my house.

Q. I am speaking about the conversation between you and Mr. Shonts after you left the Mayor. A. I am most impressed with the idea that he said, "We will go and have dinner," and that was the most agreeable thing he said to me. We had been late. We had lost our way and we were late in arriving at the Mayor's house, and we were all hungry, at least I was. I was thirsty also. I saw no food in sight until we got back to the City, but Mr. Shonts had a good Samaritan who refreshed us.

Q. Were you of the opinion out of the conversation, whatever it was, that the minds of these two parties had nearly met? A. I thought that considerable progress had been made. I thought with a few minor changes here and there that it might be consummated very soon.

By Chairman Thompson:

Q. What was there to give you that impression? A. One of the things, that is it is my recollection, one of the things was that there was only a half per cent. difference between whatever arrangement was then between them. The next thing was that the Mayor had said to us——

He might have done that, but he allowed us to depart in peace.

There was no break, but we went forth bidding each other God speed. He seemed to be cheerful and amiable and laughable.

By Mr. Moss:

Q. What did Mr. Shonts say to you that made you think he had made progress? A. He didn't take me into his confidence. He said to me enough that convinced me that they had not quite finished the negotiations, but that he had progressed and he and Mr. Gaynor discussed it very thoroughly. He seemed in rather a jovial and receptive mood.

Q. Did he say that? A. He said that he had a pleasant visit with the Mayor.

By Chairman Thompson:

Q. What do you mean by that term? A. I am using that term as you use it in Lockport.

Q. We very frequently say that when we don't mean anything? A. We had laid aside our armor. We were going home probably just as you would go from a baseball contest. We were just as friendly as we could be. The subject was not discussed.

Q. Mr. Shonts said nothing? A. Mr. Shonts expressed satisfaction with the visit.

Q. He didn't think it had been in vain? A. No.

Q. Then you don't say that something wasn't said about that that you haven't told? A. I think that is about all. Mr. Shonts said that they had made progress, and he thought that the Mayor would take it up seriously and that he thought he might arrive at a proper result. I think that is all he said and I was not in Mr. Shonts' confidence. As I tell you, I was simply to take Mr. Shonts' impressions and convey them to the Mayor. I was not in his confidence. He never told me his plans. As far as I know Mr. Shonts was inspired by the noblest of intentions.

By Chairman Thompson:

Q. You didn't say anything about his inspiration? A. He convinced me he was working for the interests of the people who employed him and that is about the noblest thing a man can do as long as it don't cross the line of cordiality.

Q. That is what you were doing? A. I was doing the best I could. I was limping behind Mr. Shonts.

Q. You said you didn't take it seriously, that $750,000, that you would not put in a bill for that. Now do you think that the Mayor was right, that your services had produced a condition that was worth $750,000? A. He was in a better position to put a value on it than I was.

By Mr. Moss:

Q. Why was the Mayor in a better position to put a value on those services? A. He knew their value.

Q. If they had any value he knew it. A. The midnight oil spent in chief consultation, the draughts of cheering beverages kept me busy all the time until I really became the secretary lunatico to the Mayor. There were a lot of different people in different localities who wrote to him regularly. He would ask me to sit down and answer them in terms which would create light and I did, and I did also for Mr. Shonts. They wrote regularly to him and we would sit down and sometimes take until 11 o'clock to answer those letters. It was the one way that I could find any encouragement to myself and keep O. K. with the Mayor.

By Chairman Thompson:

Q. You wouldn't take $750,000, even though your services might have produced that much benefit to your employer? A. That is a psychological condition that I am incapable of mentioning.

Q. In other words, you don't think that it would have been honest to take a larger sum, beyond a certain amount of your earning capacity? A. Honesty is such a ghostly thing that I am unable to define it. It changes its definition every day.

Q. Do I understand you think that these bonuses that have passed here, lawyers who got big bonusess, large sums of money, do you think that is right? A. I have not got to that class yet.

By Mr. Moss:

Q. Mr. Towns, you told me that while you were doing this work for the Interborough Rapid Transit Company, and believing it to be important work and successful work, that you didn't render any bill. You left it to them and you thought perhaps you would be appointed upon the regular staff of the Company? A. That was one of those mid-summer night dreams.

Q. Don't you see, Mr. Towns, that you having reached the height of your success, and you only rendering a bill for $10,000, don't you see where you are left? A. I couldn't help that. Every man according to his word.

Q. Mr. Towns, nobody could make anything on your bill but yourself. A. No, sir.

Q. I think you said you had labored forty or fifty days. Now can you answer that definitely? A. About fifty days. Yes, more than fifty days. I should say it was much more.

Q. Two hundred dollars a day which you were receiving as trial counsel? A. I didn't receive that every day.

Q. That was the basis upon which you figured? A. Yes.

Q. And you say that Mr. Shonts never took you in his confidence or told you his plans. Just tell us how you worked out the fifty days. A. Mr. Shonts told me about the plans, about the plans that he wanted me to know about.

Q. Were there plans he didn't tell you about? A. I was not his confessor about any plans.

By Mr. Moss.— I think that is all, Mr. Chairman. Have you any questions to ask?

Chairman Thompson.— None. All of the witnesses except Mr. Watson will be excused until tomorrow morning at 11 o'clock.

ARCHIBALD R. WATSON, being duly sworn, testified as follows:

Examination By Mr. Moss:

Q. Mr. Watson, you were formerly Corporation Counsel? A. Yes.

Q. Were you asked to pass upon the validity of the subway contracts that were finally executed? A. My department was asked to approve them as to form.

Q. Only as to form? A. That is the extent of the definition of the law department in connection with any contract.

Q. Were you not asked whether the contracts were legal? A. That would be included in what I have said, Mr. Moss.

Q. As to form that is true, but as to their legality? A. The legality of their form.

Q. Who wrote the opinion that the contracts were legal? A. I don't recall that any opinion was written. All such contracts, according to my recollection, simply have a written line somewhere upon them that they are approved as to form or something to that effect.

Q. Wasn't there a letter of approval written? A. I don't recall that there ever was.

Q. You don't recall any letter having been written which in form or substance intimated the approval of yourself or of your department to the contract? A. Such a letter may have been written, but I do not recall it. If such a letter was written and a copy of it were shown me perhaps I might identify it.

Q. Did the Mayor ask you to render a favorable opinion? A. He did not.

Q. Did anyone else ask you to do so? A. No.

Q. Did anyone discuss the question of your opinion before it was rendered? I am speaking outside of the department. A. Certainly not.

Q. I am assuming that either an opinion was rendered or that an opinion is implied in the former approval. A. I recall no such opinion having been rendered or written.

Q. Wasn't it customary to write a letter of approval on such matters? A. I should say not, sir. The fact is that in the administration of the law department the approval of contracts is handled by a bureau in that department and I cannot tell you at this moment whether I personally approved these contracts, or whether it was done by the head of that bureau. I don't recall at the moment. Sometimes I did do it, but more frequently the head of the department.

Q. Do you remember having had any consultations with members of your department over those contracts as to their legal form? A. Not specifically. Undoubtedly the matter was mentioned to me, but I recall nothing specifically at this time.

Q. Do you remember any conversation with the Mayor or any other member of the City Government regarding the terms and the legality or illegality of the contract? A. I do not at this time.

Q. There were constitutional questions involved which were brought up in cases afterward, and I am turning to that and calling for matters which would not be necessarily matters of record, to see what recollection you have on that subject. I am assuming, Mr. Watson, that in a matter of that importance, with so interesting and important constitutional questions that there may have been conferences between you and other members of the City Government in which you were asked to express some opinion as to the legality or illegality of the contracts or constitutionality or unconstitutionality of them. A. I cannot recall at this time any such conferences. The fact is that many important matters were made the subject of taxpayers' action, and I don't remember that I gave any particular or special attention to the actions that were brought to restrain the execution of these contracts, except, if my recollection is correct, shortly before the contracts were executed, it seems to me that I appeared at Special Term personally and argued in opposition to a motion for an injunction to restrain the execution of these contracts.

Q. Mr. Watson, if any thing occurs to you, if your memory comes to regarding any such conversation or consultations, I would like to have you let me know it. I assume from what you said that you had no knowledge or information that the Admiralty suit was brought at the request of the Interborough Rapid Transit Company, or that the Interborough Rapid Transit Company was financing it. A. None whatever.

Q. So far as you were concerned that was a suit brought by a taxpayer on his own motion? A. Nothing to distinguish it from any other taxpayer's action.

By Chairman Thompson:

Q. You were Corporation Counsel? A. I was Corporation Counsel from the 1st of January, 1910, to February 1st, 1914.

Q. All that time you were Corporation Counsel? A. Yes.

Q. What does the Corporation Counsel do himself? A. Would you like to have it in detail?

Q. Does the Corporation Counsel work or does he just allow other people to work? A. I performed a great deal of work myself and a great amount of work was also done by the assistants in the office. I didn't hire them, Mr. Chairman, but they were there and

were very industrious. You have to divide the work there somewhat.

Q. What class of work did the Corporation Counsel himself do? A. The Corporation Counsel himself had no defined duties.

Q. Did you take all important matters? A. By no means, sir.

Q. Well, the most important matters or the most important things that have come to your attention, would naturally come to your personal attention, wouldn't they? A. No, sir. That would depend entirely upon the nature of the question. In connection, for example, with the contracts, the law department — I was not consulted about the policy or the materials of any contract, and as a matter of fact we didn't pass upon it. We simply were asked to say in fact whether or not the contract was legal in form and whether it accomplished the purposes in a general way.

Q. Now, I am going to explain to you, Mr. Watson. Mr. Hardy is Corporation Counsel now, and has sent me word that he would like to have me come and see him personally about this contract, which I am going to do. Now that shows me that in matters like this that he personally takes an interest in it because he gets it from the press. In relation to this dual subway contract that went over about this time, you must have got a good deal of that from the press? A. Undoubtedly in a general way anything that appeared in the press came to my attention.

Q. Did this matter come to your personal attention? A. Now, Mr. Chairman, let me tell you —

Q. Do you know what I mean about dual subway contracts? A. Yes, sir.

Q. I am asking you then if these dual subway contracts came to your personal attention. A. I think I saw them, Mr. Chairman, but I am quite sure that I don't remember at this moment that I personally approved them as to form or whether they were approved by someone else in the office.

Q. The public press had a great deal to say about them, didn't they? A. At times the public press had a great deal to say.

Q. Isn't this the most important matter that came before you, the matter of these dual contracts that affected the Ciy, during your term of office? A. It was a very important matter.

Q. I ask you if this was not the most important matter that

came before you during your entire term of office? A. The function which the department performed there —

Q. Was this the most important matter that came before your department during the time that you were in office as Corporation Counsel of the City of New York? A. It involved, I suppose, more money than any other contract.

Q. Can you answer the question, or don't you want to? A. I want to give you what information I can. I have given the best answer I can.

Q. You don't want to say that this was the most important? A. That is a matter purely of judgment. I don't want to criticise it. It involves more money of course.

By Mr. Moss:

Q. It was the City's future, too.

By Chairman Thompson:

Q. You don't want to characterize it as the most important one that came before you? A. It probably was.

Q. That is what I am trying to get at. Now, then this being the most important matter, don't it seem as though your recollection should be pretty free about what occurred in reference to it in your office? A. I have stated, Mr. Chairman, what occurred to it in my office.

By Mr. Moss:

Q. I would like to have Mr. Watson understand what is in the minds of all of us. I want to remind you, Mr. Watson, that in the taxpayers' action that was brought, your department took the position that the contracts were constitutional, that they stood for the contracts. I want to know whether that position was taken after conference between you and the gentlemen who had charge of that case in the Appelate Court. A. Undoubtedly. I am speaking now not from recollection, but as a mtter of general course of procedure, undoubtedly there were some conferences between my assistants and myself about the constitutionality of these contracts.

Q. Your name is recorded in the printed report of the case, 206 New York. A. I believe that is so in almost all cases in which the law department appears.

Q. Did you allow your assistants to reach a position in favor of the constitutionality of that contract without reaching any opinion yourself? A. I did not have the reading of that myself, Mr. Moss. I conferred with my assistants, but I didn't write a brief and it was handled by the experienced assistant in the office.

Q. Determining the legality of the contract is more than an administerial act, isn't it? A. Perhaps so. It is done thousands of times every year.

Q. Supposing you had studied that contract and had reached the same conclusion as to its being unconstitutional that Louis Marshall did, for instance, it would have been your duty to inform the Mayor and the City authorities on the question, or the conclusion you had reached, would it not? A. Yes, sir.

Q. Did you make any such a study? A. No, sir.

Q. Did you cause it to be done? A. Yes. It was done in the usual course of business.

Q. Have you any recollection of the conferences or any of the people in reference to the study of this contract? A. I conferred with Mr. Halby, and I am inclined to think he made some sort of a written report about it.

Q. Who is he? A. He was one of the staff.

Q. How many men on the legal staff? A. There were seventy-two or seventy-three known as assistants.

Q. Was Mr. Halby an assistant? A. He was.

Q. Did you look upon him as the strongest constitutional lawyer in your force? A. I considered him competent to handle the question.

Q. Did you look upon him as the strongest constitutional lawyer on your force? A. Well, I won't say that. I considered him the best qualified man to handle this question. I won't say that I looked upon him as the most qualified constitutional lawyer in the force. There are a number of men who have had a great deal of experience on constitutional questions. My impression is that I also consulted Mr. Garland.

Q. Were there any men outside of Mr. Garland and Mr. Halby who had more experience on constitutional questions and studied further on these questions? A. I don't think so.

Q. Did you have any conferences in which you gathered mem-

bers of your staff together and discussed the constitutional question? A. Not as far as I recollect.

Q. Did you reach the conclusion yourself, based upon study, that the contract was constitutional? A. I don't know how much study I gave it, but I reached the conclusion after a conference with my assistants there.

Q. In your conferences with your assistants did you go over the points that they made and authorities which they cited? A. I presume I did, although I cannot recall definitely and clearly the occurrences at the conferences.

Q. Does your recollection enable you now to recall whether the Mayor or any other officer of the City Government expressed the hope that these contracts would be found to be constitutional? A. I have no recollection of anything of the sort.

Q. Have you recollection that anything of that kind occurred? A. No.

Q. Might have happened? A. I won't say it did not happen, but I don't recall it having happened.

Q. Were you aware that any members of the City Government were anxious to have these contracts put through? A. No.

By Chairman Thompson.— Mr. Watson, you are excused temporarily. Before you go, however, I want to say that this is an inquiry in which you are interested just as much as anybody else, and when you get all these lapses of memory on this proposition it is pretty hard to investigate. Men who are in positions like you were, I should think that this Committee is entitled to their real reasons on this subject that came before you. A. You are entitled, Mr. Chairman, to the very best I can give you, and you are going to get it. But please, Mr. Chairman, don't ask me to recall things that happened six or seven years ago.

By Chairman Thompson:

Q. Well, I want to say to you, Mr. Watson, that I can remember every detail of the most important law suits that occurred in my office in the last twenty years, and I should think that this affair concerning the people of the City of New York, one of the largest transactions that has occurred in history, should still be retained in your mind, and we will excuse you temporarily in the

hope that you will refresh your memory somewhat. A. Well, Mr. Chairman, in reply to that I can only say that you are blest with a more retentive mind than mine.

Chairman Thompson.— We will adjourn now until to-morrow morning, March 11th, at 11 A. M.

The meeting thereupon adjourned until March 11th, 1916, at 11 A. M.

March 11, 1916.

MUNICIPAL BUILDING, NEW YORK.

Meeting of committee called to order by Chairman Thompson, at 11:45 A. M., a quorum being present.

KINGSLEY L. MARTIN, being duly sworn, testified as follows:

Examination by Mr. Moss:

Q. Mr. Martin, what is your occupation? A. Consulting engineer.

Q. Are you employed in the City Government? A. I am not.

Q. Have you been? A. Yes.

Q. When were you? A. About 1892 until 1911.

Q. What position did you hold? A. I was first employed as assistant engineer on the Brooklyn bridge. In 1896 I became assistant engineer on the Williamsburg bridge and was later promoted to be engineer in charge of both the Williamsburg and the Brooklyn bridge and was later made chief engineer of the department, and was finally appointed Commissioner of Bridges by Mayor Gaynor in 1910.

Q. In 1910, when you were Commissioner of Bridges, did the Mayor request you to take up any matter, particularly with reference to subways? A. He did.

Q. When did he make that request of you? A. In the early part of 1910, I think it was in April.

Q. April, 1910? A. That is my best recollection.

Q. Could it have been in May? A. It was earlier than that.

Q. Was it in the latter part of April? A. I couldn't say at this time.

Q. Could it have been after the 22d day of April? A. It may or may not. I had a conference with the Mayor relative to the transportation matters from the time of his appointment up until the end of my connection with him, and I couldn't fix the definite date of any one particular conference.

Q. Well, what did he ask you to do? A. I had presented to him certain matters which had come before the Bridge Department relative to the bringing of transportation lines across the bridges over the East river, with which I had connection, and in talking the matter over in a general way, he asked me if I knew of anybody connected with the Interborough Rapid Transit Company. I told him I did not at that time, but that it would be a very easy matter to get acquainted, and if he wished me to talk over any matters of that kind I would be very glad to do so.

Q. Proceed and state as well as you can the various conversations that you had which led up to your doing something? A. At that time he spoke of an interview which he had had with Mr. Shonts at his home, at the Mayor's home at St. James, and had expressed himself as very much dissatisfied with the situation which existed in the City at that time, and stated that in his judgment the proposition which had been submitted by the Interborough Rapid Transit Company at that time was not acceptable to the City, and expressed a desire, if possible, to reach someone connected with the Interborough Rapid Transit Company who would have a sufficiently broad-gauged view of the situation, preferably the men among the Board of Directors who were sufficiently broad in their views of matters, so that they would submit a proposition to the City which would be acceptable both financially and from the lines which they covered.

Q. What did he say was the matter with the proposition as given to him by Mr. Shonts? A. He thought that the proposition was not acceptable to the City from the fact that the routes were not sufficiently comprehensible, and that the amount of money which the Interborough Rapid Transit Company wanted to advance was not commensurate with the proposition to be undertaken.

Q. Did he express himself with regard to the tri-borough route? A. My recollection is that the opposition at that time was that the subway lines, which were at that time in operation, had been built with the City's capital, were fundamentally City lines and should be the lines which would be developed with the idea of giving people a five cent ride from one part of the City to the other.

Q. Was he figuring upon a five cent ride then from one part of the City to the other? A. That is my recollection.

Q. Without any diversion by the East river? A. So far as Brooklyn was concerned that was not considered. The idea was —

Q. The idea was that the people who wanted to get to any part of the Borough of Manhattan or wanted to go to Brooklyn or vice versa, that they should be able to do so all with the five cent fare? A. That is right.

Q. Did he think it impossible to accomplish it with any proposition that had been submitted? A. Yes.

Q. Did he tell you what conversation he had with Mr. Shonts? A. He did not.

Q. Did you ask him? A. No.

Q. Did you gain any information from him as to the result of the conversation he had with Mr. Shonts, the particulars so far as they were arrived at in the conferences? A. No. He said only that the situation was unsatisfactory.

Q. Did he tell you that they had got within a half per cent.? A. No. I never heard that mentioned by the Mayor.

Q. Then he simply said he had a conference with Mr. Shonts and he wanted you to find out whether there were any broad-gauged men in the Interborough Rapid Transit Company? A. That is about it.

Q. Did you go out on that errand? A. Yes.

Q. What did you do? A. I met Mr. E. J. Berwind and talked the matter over with him, and he asked me to take the matter up with Mr. Shonts, who was more thoroughly familiar with their position than anybody else, and he took me up to the Interborough Rapid Transit Company's offices, and I there met Mr. Shonts and I talked the matter over with him.

Q. What conversation did you have with Mr. Shonts? A. Mr. Shonts stated that their position was that they wanted nothing

from the City, but what was entirely fair and right and reasonable, and that if their proposition was gone over by men who were familiar with transportation matters and with railroad matters that the figures on which their estimates and propositions were based that he was satisfied the Mayor would be convinced that their proposition was a reasonable one and would be acceptable to the City, and he stated that he had asked the Mayor to send somebody down there to make that examination and that he would be very glad to lay before us any books or papers which they had, and submit to our examination any figures that had been made by their engineers and the estimates on which their proposal had been based.

Q. Did he tell you what conversation he had with the Mayor at St. James? A. I do not remember that he did. Except in a general way I said that the proposition was the one which had been submitted to the Public Service Commission and with which I was familiar.

Q. What further negotiations did you have with Mr. Shonts? A. I had a number of talks with him including an examination of the estimates which had been prepared by the Interborough Rapid Transit Company's engineers. He called in their chief engineer, Mr. Pegran, and instructed him to give to Mr. Ingram and myself all the data that he had.

Q. Who was Mr. Ingram? A. Formerly chief engineer of the New Haven Railroad. Mr. Ingram informed Mr. Shonts that in doing so, in complying with his request, that they would do something that they had never done before, but nevertheless Mr. Shonts instructed him to place their figures at our disposal, which he did, and we went over them very carefully, and made up our minds that the figures were fair. They may have been wrong in smaller places, but so far as figures go in advance they were just and fair enough for the proposition.

Q. Did your negotiations with Mr. Shonts take into view an expenditure of money raised partly by the City and partly by the Interborough Rapid Transit Company? A. My recollection is it did. I am sure it did.

Q. You were really the Mayor's representative, were you not? A. I was never specifically so constituted, but so far as I know I was, yes, sir.

Q. As the nearest representative you were negotiating with the president of the Interborough Rapid Transit Company, were you not? A. What I was doing was trying to establish a proposition for submission to the Public Service Commission.

Q. You were negotiating with the Interborough Rapid Transit Company through Mr. Shonts and directors in order to induce them to put up a proposition which might possibly be acceptable? A. Well, I was simply stating my views.

Q. Well, if you don't like the word negotiate — A. I was simply giving the Interborough Rapid Transit Company the benefit of my views and experience in city matters in framing up a proposition which, in my judgment, would be acceptable to the Mayor and to the Public Service Commission when presented.

Q. What did you know about the Public Service Commission as to what it would consider? A. Because I had read the correspondence between the Public Service Commission and the Interborough Rapid Transit Company and I talked with some of the Public Service Commissioners and I rather thought I knew what would be acceptable to them.

Q. Do you know the attitude of Mr. McAneny regarding the proposition from the Interborough? A. No.

Q. Did you try to find out? A. No, sir.

Q. Were you acting with Mr. Shonts on behalf of the Mayor individually? A. No.

Q. To bring about the proposition which you would be willing to present? A. I am quite willing to handle the railroad proposition. We could not have any understanding there you know.

Q. Don't you think you can answer that question? A. I am doing the best I can, Mr. Thompson.

Q. You do pretty well. You do a good deal better than a lot of other witnesses.

Chairman Thompson.— Just answer counsel's questions — whatever answer it calls for.

Q. Do you kepe a diary? A. No.

Q. Didn't you make any record in any book or upon any paper, any memorandum at all of these interviews? A. The only record

I have was an occasional letter which was written to some person on one side or the other, but there is no daily memorandum.

Q. Where are those letters? A. I think they are in the files of the Department of Bridges.

Q. Were they on bridge business? A. Those of the Brooklyn Rapid Transit Company were.

Q. And were you writing to the Brooklyn Rapid Transit Company at that time? A. I was.

Q. What were you doing with that? A. I had written to them relative to the operation of their line across the East River bridge. With the increase in transportation I wished to obtain from them an idea as to their plans, so that I could make a plan to correspond with it.

Q. I think it is clear between us that acting for the Mayor in the way you have described you were communicating with Mr. Shonts and others representing the Interborough Rapid Transit Company with the object of inducing them that you could present a proposition which would insure an acceptance of the offer, and that that proposition involved the use of City capital and of private capital? A. That is correct.

Q. Do you know of the article which Mayor Gaynor wrote and which was published in Pearson's Magazine of June or July, 1909? A. I do.

Q. And didn't he in that article severely condemn the Interborough Rapid Transit Company? A. Yes.

Q. Didn't he severely condemn the proposition of combining the use of City money and private money? A. That I don't remember.

Q. Do you remember what were the points of his condemnation of the Interborough Rapid Transit Company? A. I never read the article itself but from what the Mayor said I understood that he thought that the contention of the Metropolitan Railway Company and the Interborough Rapid Transit Company was not in the City's interest, and at that time he did not have a very high opinion of some of the personnel in the Interborough Rapid Transit Company management.

Q. Had that personnel changed any? A. Not that I know of.

Q. The same personnel, the same individuals were still there, were they not? A. About the same.

Q. The Croker interest was still in that, was it not? A. I don't know.

Q. The Freedman interest? A. I understand so.

Q. Mr. Freedman was a very prominent factor in the Interborough Rapid Transit Company, was he not? A. I understand so.

Q. And the Croker interests and the Freedman interests were substantially the same were they not? A. That I don't know.

Q. Didn't you look into these matters? A. Not at all.

Q. Didn't Mr. Gaynor object to the Interborough Rapid Transit Company because of its allegiance with the Freedman and Croker interests and because of its domination by such interests as I have mentioned? A. That I cannot say.

Q. Didn't he express himself as being afraid that the Interborough Rapid Transit Company might fall down, break up? A. No.

Q. Did he express the idea that they might fall down and that they were over-capitalized? A. He never spoke of them falling down.

Q. And hadn't Mayor Gaynor spoken particularly about the advisability of competition by the City with these private lines? A. No, sir. My recollection was that he was opposed to it.

Q. Was he opposed to the City building its own subway? A. Yes, according to my recollection.

Q. Is that your best recollection? A. Yes, sir. At that time.

Q. At what time? A. This time we are speaking of.

Q. What about 1909? A. I had no communication with the Mayor at that time, and had no means of knowing personally what his views were.

Q. Well, in your conferences with Mr. Shonts didn't you find out that he was afraid of City competition? A. Not that he was afraid of it, no.

Q. Didn't he ever express himself to you of the belief that if the City went in and built routes it would destroy the property in which he was interested? A. Quite the contrary.

Q. Did you ever hear of that at any of your conferences with Mr. Shonts? A. No, sir.

Q. Did you ever hear or read an expression of that opinion on behalf of the Interborough Rapid Transit Company's lawyers? A. Not that I remember.

Q. Did Mayor Gaynor tell you why he changed his opinion of the Interborough Rapid Transit Company so that he was willing to try to induce them to make an offer that could be accepted by him? A. He never stated that he had changed his opinion.

Q. You knew that he had? A. No, sir.

Q. Did you still think he had the same opinion of unfriendliness and suspicion toward the Interborough Rapid Transit Company? A. To a large extent, yes.

Q. Even when he was trying to induce them to make an offer? A. Yes.

Q. Did he express to you while you were conducting these negotiations any doubt or any suspicion of the Interborough Rapid Transit Company as to anything? A. No, I cannot say that he did. He was sometimes very much dissatisfied with the way the proposition was submitted and the way things were progressing.

Q. When, if at any time, did the Mayor express anything that showed that he was more pleasantly inclined toward the Interborough Rapid Transit Company than he had been? A. I don't think it was a matter of inclination at all.

Q. Was the offer of July 5th, 1910, different from the previous offers of the Interborough Rapid Transit Company? A. It was.

Q. In what respect? A. I couldn't say without comparing them.

Q. In a general way what would you say? A. I prefer not to say without having a chance to study them over.

Q. Have you no idea at all of any single particular in which it was different? A. I have not at this moment, because those propositions were changed from time to time.

Q. Was the proposition of July 5th, 1910, in your opinion more favorable to the City or less favorable to the City than the previous proposition? A. I think it was more favorable.

Q. Did you do anything in the transmission of the offer of July 5th, 1910? A. If my recollection is correct, I took the letter which Mr. Shonts had written to the Mayor.

Q. Mr. Shonts wrote a letter to the Mayor containing that proposal? A. He did. My recollection is that Mr. Shonts wrote a letter to the Mayor in which he stated specificially what the proposition was or would be. Of course the Mayor had no authority to act on a proposition of that kind and Mr. Shonts sent the same letter simultaneously to the Chairman of the Public Service Commission, Mr. Wilcox.

Q. Wasn't the letter addressed to the Commissioners? A. I understand that the two letters were written and I know one of them was addressed to the Mayor, and my understanding is that the other was addressed either to the chairman or to the commissioners.

Q. Wasn't there a letter addressed to the commissioners and also a letter addressed to the Mayor in the same envelope? A. There may have been but I do not recall that there was.

Q. When did you see Mr. Shonts prior to his writing that letter? A. Within a day or so.

Q. Where, at his office? A. At his office.

Q. What conversation did you have with Mr. Shonts about July 5th or 4th, 1910? A. I don't recall any conversation at that time.

Q. Well, the letter came out of that conversation, didn't it? A. My recollection is the letter was dated June 28th.

Q. Well, that letter came out of the conversation that you had with Mr. Shonts, didn't it? A. It was the result of at least twenty conversations where this proposition had been discussed very thoroughly.

Q. You and Mr. Shonts had conferred about the time of that letter of June 28th, if that was the date, and they were practically the terms that you and Mr. Shonts had agreed upon, were they not? A. Why, partially so.

Q. You felt that the letter which he was about to send would be acceptable to the Mayor? A. I did.

Q. And you had arranged the terms of that letter or proposal as the Mayor's representative, had you not? A. I would hardly put it that way. It was simply that Mr. Shonts was writing a letter to the Mayor in which he had made a new — what was substantially a new proposition.

Q. I think you are getting away from it. You had gone from the Mayor to Mr. Shonts to suggest that he might make a proposition? A. Yes.

Q. And then you and he, through perhaps twenty conferences, worked together upon what you thought would be the terms that would be acceptable to the Mayor? A. Yes.

Q. And finally on June 28th a letter was written which was the joint product of your mind and of Mr. Shonts' mind, isn't that so? A. Only to this extent: that all the suggestions that I had to make and would like to have embodied in the letter —

Q. You were able to put a good deal in the letter, were you not? A. I think I was.

Q. And in doing that you were not acting as Commissioner of Bridges? A. No.

Q. You were acting as Mayor Gaynor's personal representative? A. To a certain extent, yes.

Q. His envoy, so to speak? A. Not at all. I was acting on my own responsibility.

Q. You had no personal relation in regard to that matter? A. I had no personal relation to it in the position as Bridge Commissioner.

Q. You mean to say you had no power to do anything? A. Only to suggest.

Q. And you were suggesting what the Mayor wanted you to suggest, were you not? A. Not altogether.

Q. He was the man who wanted you to suggest? A. I was putting in suggestions of my own.

Q. You didn't put in any suggestions you didn't tell the Mayor about? A. Certainly.

Q. What were they? A. There were a number of points about the route which were to be followed and something about the financial conditions and terms which the Interborough Rapid Transit Company would offer to the City.

Q. What was that? A. I cannot say without refreshing my recollection.

Q. Was it a matter of terms? A. Yes.

Q. Was it a matter that the Mayor would be interested in? A. undoubtedly so.

Q. Why didn't you report it to him? A. They reported it when the letter was finally submitted.

Q. Who else outside of you, Mayor Gaynor and Mr. Shonts brought forth any matters that were put into the letter? A. I think some suggestions were made by Mr. Ingram.

Q. Anyone else? A. Not that I know of.

Q. No Public Service Commissioner? A. Not that I know of.

Q. Didn't the Public Service commissioners know that these conferences were going on? Did not the Public Service commissioners know the series of conferences? A. I believe Mr. Wilcox was familiar with the fact.

Q. How did you know that? A. Mr. Shonts advised me to that effect.

Q. How did Mr. Shonts know that Mr. Wilcox had knowledge of this fact? A. I don't know that he did. Let me amplify that. Mr. Shonts didn't say that Mr. Wilcox wanted it to be done.

Q. Have you told us all that you remember in regard to the fact that Mr. Wilcox wanted it to be done? A. I think I have told you all. I think he understood about the matter.

Q. From what Mr. Shonts said? Yes.

Q. Why did you go ahead with it then? A. Because Mr. Gaynor was Mayor of the City, and had been elected on a platform in which the question of the transportation facilities of the City was one of the main issues and he was the one who would be held primarily responsible.

Q. Had he been elected upon a platform of going into a business with the Interborough Rapid Transit Company? A. Not that I know of.

Q. Had he been elected on a platform of antagonism to the Interborough Rapid Transit Company? A. I don't know of an expression in the platform in that respect.

Q. What did Mr. Gaynor say about Mr. Wilcox in any respect? A. He said a number of things at various times. I would like the question more definite.

Q. I am calling for any remarks that were made at any time. A. He seemed to have a very high respect for Mr. Wilcox's ability as chairman of the Commission and frequently expressed himself so.

Q. Yes, but he shut Wilcox out and took charge of Mr. Shonts himself, didn't he? A. Not as I understand it.

Q. Well, what became of Wilcox? Was he in or was he out? A. I don't know.

Q. The same day that he received this proposition from Mr. Shonts then he was brought in, wasn't he? A. I don't know, I am sure.

Q. Was the Mayor taking charge of Wilcox's end? A. Not that I know of.

Q. What do you think? A. The Mayor said in his letter of transmittal that this proposition had been submitted to him as Mayor of the City, and that he transmitted it to the Public Service Commission for heir approval.

Q. Well, isn't the communication addressed to the commissioners? A. I have already explained that matter.

Q. You think Mr. Shonts wrote simultaneously to the Mayor and to the Commission? A. That is my impression.

Q. Didn't the Mayor act as a porter with your assistance for carrying Mr. Shonts' proposition to the commissioners? A. I don't so understand it.

Q. What else did he do? A. The proposition was submitted to him and by him it was transmitted officially to the Public Service Commission for their approval.

Q. It was the Public Service Commission that would have to approve, wasn't it? A. Directly, but not ultimately.

Q. And the Mayor took it out of the hands of the Public Service Commission, didn't he? A. I don't so understand it.

Q. You didn't see anything of Mr. Wilcox, did you? A. No. sir.

Q. And in talking with Mr. Shonts you didn't find that any Public Service commissioners were present, did you? A. No, sir.

Q. Didn't he tell you that he had been to the office of the Public Service Commission trying to work up the Commission? A. My recollection is that he had been to the Public Service Commission chairman, who took this matter up.

Q. You knew very well that he was negotiating with the Public Service Commissioners? A. I had no way of knowing that at all.

Q. You didn't find that out? A. No.

Q. And if you were representing the Mayor and doing your work up to the handle you would know that? A. I had no means of knowing.

Q. Well, you don't think anyone else would know, do you? A. I don't know.

Q. It would not be conductive to harmony to have too many people put in on it, would it? A. I can only say that that was the way that the negotiations were conducted.

Q. Hadn't that matter been for over two years in the hands of Mr. Wilcox? A. I don't know.

Q. Hadn't it been practically in the hands of Mr. Wilcox for two years? A. I don't know.

Q. When did they drop out of the negotiations? A. I don't understand that they dropped out. They, however, took this position, that they were a judicial body and they had no authority to originate any plan, consequently the situation at that time was if the Railroad Companies, particularly the Interborough Rapid Transit Company, would draw up and submit plans to the Commission the Commission would then be in position to pass upon the matter.

Q. Your idea is that as the Public Service Commission was a judicial body and could not itself deal with the problem and furthermore that the Mayor reversed his form, changed from being an antagonist of the Interborough Rapid Transit Company and became a negotiator with the Interborough Rapid Transit Company in order that the proposition might be produced which would result in a five cent fare from both sides of the East River? A. I think you are substantially correct.

Q. Well, that was the way it resulted finally, wasn't it? A. I think not.

Q. Well, on the B. R. T. there was a general five cent fare adopted finally as the result of these negotiations on both sides of the East River, wasn't there? A. No, there was not.

Q. Now, wasn't it the object of the Mayor going into a deal with the Interborough Rapid Transit Company to get this general five cent fare? A. I believe so.

Q. Well, it fell down, didn't it? A. It did.

Q. What caused it? A. It was found impossible to achieve the result. It was found impossible to give to the people of the City of New York transportation from one part of the City to the other for five cents.

Q. If the Interborough Rapid Transit Company's proposition of July, 1910, had been accepted would that not have done it? A. No, sir.

Q. Then what did the Mayor go into it for? A. To achieve that result as nearly as possible.

Q. Well, they did nothing to bring it about, did they? A. No.

Q. When did the Mayor enter into it? A. I don't remember the exact time.

Q. Well, why did the Mayor enter into it? A. To achieve the result as nearly as possible.

Q. What did the Mayor go into it for? A. To do the best he could.

Q. I have had handed to me a letter of the Mayor to Mr. Wilcox, dated July 6th, 1910, from the official files:

"City of New York,
Office of the Mayor.

July 6th, 1910.

"Dear Mr. Wilcox:

"I am sending you a copy of a letter which I have today received from the Interborough Rapid Transit Company."

Mr. Moss.— I will see that the stenographer is furnished with a copy of this letter.

The letter reads as follows:

"City of New York,
Office of the Mayor.

July 6, 1910.

"Dear Mr. Wilcox:

"I am sending you a copy of a letter which I have today received from the Interborough Rapid Transit Company for the building at once of extensions of its present subway system, namely, from 34th Street northward and through The Bronx to 194th Street, and from Times Square down town and by a tunnel under the East River to Pineapple Street,

Brooklyn, and thence out to Prospect Park and out the Eastern Parkway to Nostrand Avenue; in addition to putting third tracks on its elevated roads and completing the Steinway tunnel. The proposition of the company is that these subway extensions be built on the city's credit, and that after the payment of interest and one per cent of a sinking fund, and the other charges, the profits be divided equally between the city and the company. The third tracking and the Steinway tunnel are to be done on the company's own credit. The proposal that if the gross revenue should at any time be insufficient to meet the gross expenses the deficit should be made good by the city does not seem tolerable. The proposal as a whole may as well be submitted to the enlightened public opinion of the city, which will no doubt help us all to a correct conclusion. The cost will be about $70,000,000, and the company claims that these subway extensions will give more public accommodation than the Tri-Borough route, and that therefore the city's credit should be devoted to building them first instead of the Tri-Borough route, which is estimated to cost $125,000,000. Whether the city should put its credit into these extensions is the first question. The political platforms last fall seemed to demand that all subways be constructed in that way. The company claims that private capital cannot be got for the purpose, and it semes the doing of the work by private capital would entail a fixed charge of about $1,000,000 a year more than if the city's capital be used.

"Although the proposal is sent to me, permit me to say that the credit of getting the matter under way at least, so that the whole matter comes up for negotiation and consideration, is due to the continuous endeavor of you and your associates since your board was organized.

"Very truly yours,

"(Signed) W. J. GAYNOR, Mayor."

"Hon. W. R. Wilcox.

Q. Had the Interborough Rapid Transit Company prior to that time offered to Mr. Wilcox to use the Interborough Rapid Tran-

sit Company's own money? A. I understand there was a proposition of that kind.

Q. Were there not several such propositions? A. There was one at least. There may have been more.

Q. Now attached to this letter, which I have just read, is a letter that was transmitted from the Interborough Rapid Transit Company, which reads as follows:

"INTERBOROUGH RAPID TRANSIT COMPANY,
165 Broadway.

"New York, July 5, 1910.

"Hon William R. Wilcox, Chairman, Public Service Commission for the First District, State of New York, Tribune Building, New York City.

"Dear Sir:

"Replying to your letter of June 30th, in which you inquire whether it was intended that our letter of June 10, relating to third-tracking the elevated lines and putting into operation the Steinway tunnel, should be considered without reference to subway extensions, I would say that we have never made our proposals to improve the express service upon the elevated lines contingent upon the grant of additional subway franchises. It was, therefore, our intention that our proposal of the 10th ultimo should be considered upon its own merits, without reference to any other proposal.

"Replying to your further inquiry whether we have in mind to make any additional proposition regarding subways, I would say that as you have perhaps gathered as a result of our frequent conferences, since the Legislature eliminated the subway bonds from the debt limit of the city, thereby rendering impossible the enlistment of private capital for subway construction, we have carefully considered the subject of the operation by the Interborough Company of some natural extensions of the present lines, such extensions to be built with city credit. The status of our present views upon this subject may be stated as follows:

"We believe that the convenience of the travelling public in this city will best be subserved by the construction of the following natural extension to the present subway system:

"West Side Lower Manhattan and Brooklyn Extension.

" From Times Square through Seventh Avenue as extended and West Broadway to Liberty Street as a four-track road, and from Liberty street to the Battery as a two-track road, with a branch connecting with this extension from the intersection of West Broadway and Liberty street, under Liberty street and East River to Pineapple street in Brooklyn, and through Pineapple and Fulton streets to a connection with the Brooklyn extension of the existing subway as a two-track road, and a further extension from the terminus of the Brooklyn extension of the existing subway at Atlantic Avenue through Flatbush Avenue and Eastern Parkway to Nostrand Avenue as a four-track road.

" East Side Upper Manhattan and Bronx Extension.

" From about 35th Street through Park Avenue and private property at or about 40th Street to Lexington Avenue, thence up Lexington Avenue across the Harlem River to a point south of 149th Street as a four-track road; thence dividing, with a two-track connection to the West Farms branch of the existing subway, and two tracks up Mott Avenue through 153rd Street and up River and Jerome Avenues to 194th Street, with the privilege of making three tracks between 162d Street and 194th Street; the extension through River and Jerome Avenues to be built as an elevated structure.

" We would also suggest, as a matter for joint consideration, the construction of an elevated extension from Pelham Avenue, northerly up Webster Avenue to Gun Hill Road. easterly on Gun Hill Road to White Plains Road, northerly on White Plains Road to Becker Avenue; with the privilege of building a third track upon this extension from Pelham Avenue to Becker Avenue. If the city will undertake to build these lines at its own cost, upon a plan of construction not materially exceeding in cost or elaboration the plan of the existing subways, the Interborough Rapid Transit Company stands prepared to equip and operate them as a part of its existing subway system, and to extend to the citizens of this town the inestimable benefit of two-track north and

south lines upon the east and west sides of Manhattan with two Brooklyn extensions, and free transfers between all parts of the subway system for a single five-cent fare, upon substantially the following terms:

"1. The gross operating revenue of the new extensions to be ascertained from the number of tickets sold at stations along the new extensions, or, if deemed advisable by either the city or the company, from the number of tickets deposited in the chopping boxes on the new extensions, or by such other methods as upon full consideration may be agreed upon between the parties.

"2. The net profits of the company, to be arrived at as hereinafter provided, and to be disposed of as follows:

"(*a*) The city to take all net profits for the first five years from the time of beginning operations on any portion of the new subway extensions.

"(*b*) The net profit after five years to be equally divided between the city and the Interborough Company.

"3. The net profits to be determined by making the following deductions from the gross revenue in the order named:

"(*a*) Maintenance of equipment. (It is proper to point out in this connection, however, that the maintenance of the equipment will be less if the new extensions are operated by the Interborough Company, by reason of the fact that certain economies can be effected by extending over the new system the benefits of our present organization and our existing facilities, such as power stations, shops and terminals, which with some enlargement should be sufficient to take care of the old and new equipment.)

"(*b*) Maintenance of way and structures. (To be ascertained upon the basis of actual cost plus a reasonable allowance for depreciation.)

"(*c*) Cost of conducting transportation. (To be ascertained on a car-mileage basis.)

"(*d*) General and administration expenses. (Likewise to be ascertained on a car-mileage basis.)

"(*e*) Taxes, if any.

"(*f*) The actual annual charges of the company for carrying the cost of equipment and providing a partial sinking fund of three-fourths of one per centum per annum to meet obsolescence. (This provision is intended to provide for the contingency that when at the expiration of the lease the equipment is taken over by the city, its then market value, notwithstanding its full maintenance, may be less than its present cost.)

"(*g*) Interest on bonds issued by the city to defray cost of construction, plus one per centum per annum as a sinking fund.

"4. If the gross revenue should at any time be insufficient to meet the gross expenses, as provided for in section three above, the annual deficit to be made good by the city.

"It seems clear that the construction of these extensions, and their operation in connection with the existing subway so that for a signle five-cent fare the public will have the benefit of both, must be of far greater service than the building of an independent route, under independent operation, with two sets of fares, and neither the right nor the opportunity to transfer. The cost, moreover, of the extensions herein suggested is estimated by the engineers to be approximately $70,500,000, as against an estimated cost of about $125,000,000 for the Broadway-Lexington Avenue system. Inasmuch as it is manifest that both the extensions herein suggested and the Broadway-Lexington Avenue system cannot be constructed, the advantage of constructing these extensions would seem to be apparent.

"We would suggest that the terms of the lease should be at least coterminous with the unexpired portion of the term of the subway built under Contract No. 1; but that the city should have the right at any time after ten years to take back the extensions upon the reimbursement to the Interborough Company of the cost of equipment plus 15 per cent.

"The foregoing are all suggestions regarding subway extension. You understand that you already have before you for consideration our letter of June 10th, covering proposed extensions up Jerome Avenue, and also up Webster Avenue to

Gun Hill Road; easterly on Gun Hill Road to White Plains Road; and northerly on White Plains Road to Becker Avenue. If your Commission prefers, these extensions, in place of being made as elevated extensions, could be made subway extensions with trackage arrangements for elevated service.

"Very truly yours,

(Signed) T. P. SHONTS,

"President."

Mr. Moss.— I offer in evidence and will supply copy of a letter of September 22nd, 1909, by Mr. Shonts as president of the Interborough Rapid Transit Company, to the Hon. William R. Wilcox, president of the Public Service Commission for the First District, which I understand to be a formal proposition. It is dated September 22nd, 1909, and I will furnish a copy to the stenographer.

Q. What happened after the transmission of that letter? A. What is that?

Q. By the way, did you carry it? A. Where?

Q. From the Mayor to Mr. Wilcox? A. I did not.

Q. Who did? A. I have no means of knowing.

Q. What was the next thing that happened? A. As far as I was personally concerned?

Q. Yes. A. There was a letter written by Chairman Wilcox to the Mayor relative to this proposition which had been submitted, and which probably indicated that the proposition was not satisfactory to the Commission, and there the matter rested until after the Tri-borough route had been advertised in the fall. There were two advertisements made, one for construction of the tri-borough route by private capital, and another, a month later, which provided for its construction by City capital for —

Q. That resulted in what? A. That resulted in bids being received, as I remember, for the construction of certain parts of the line on Lexington Avenue and construction was authorized there with the idea that construction at that point would fit in with any future plan there. Another proposition was drawn up by the Interborough Rapid Transit Company about that time, I think, which was submitted in December to the Public Service Commission.

Q. You are sure it is December? A. I believe so.

Q. Can you state in a detailed way the difference between the offer of December, 1910, and the offer of July, 1910? A. Not without studying the two propositions. It was in the following January that following series of conferences I had had with the Brooklyn Rapid Transit Company people that Col. Williams started to enter the transportation field and submit a proposition.

Q. Why did you have any conferences with the Brooklyn Rapid Transit people? A. On my own initiative, because I realized that Brooklyn and Queens could not be taken care of by any proposition submitted up to them at that time.

Q. Did the Mayor know that you were seeing the Brooklyn Rapid Transit Company? A. It may have been that I talked with him about the desirability of the Brooklyn Rapid Transit Company.

Q. How about the Brooklyn Rapid Transit Company's terms? Did they seem to be more acceptable than the other side of the river? A. Absolutely.

Q. Didn't the Mayor know that you were seeing the Brooklyn Rapid Transit people? A. I am not clear at this time as to whether I had spoken to him about that or not.

Q. Did you have such a clear understanding with him that you felt you could do that? A. I did.

Q. You were simply his personal representative? A. In a way, yes.

Q. In other words, you had a general power of attorney? A. I wouldn't call it so, no.

Q. Do you mean that you did or did not talk with the Brooklyn Rapid Transit people with the authority of the Mayor? A. I did not talk with the authority of the Mayor.

Q. Do you know whether any person connected with the Brooklyn Rapid Transit Company had seen the Mayor? A. I don't remember that he ever spoke of having been interviewed by the company.

Q. Didn't Mr. Williams see Mayor Gaynor in January or February, 1911? A. I believe that he did.

Q. What makes you believe that? A. The only thing I am not clear about is the date.

Q. It was just after he became president, wasn't it? A. I think you said 1911. Was it in 1911? A. Mr. Williams was not president of the Brooklyn Rapid Transit Company in 1911, if my recollection is correct.

Q. What did Mr. Gaynor say at that interview? A. The object of the interview was to present for his consideration the plan which had been drawn up by the Brooklyn Rapid Transit Company, whereby their lines were extended into Manhattan, and that was the first time that plan had seen the light of day.

Q. What did the Mayor say to Mr. Williams? A. He was inclined to think the plan had merit.

Q. Come to the conversation. Please give it to us. A. I couldn't repeat the conversation at this time.

Q. Give it to us as you can. If you cannot give it correctly give it to us in substance. A. I had arranged the interview, following the submission made by Mr. Williams informally of the plan which he had formed, and by which the Brooklyn Rapid Transit Company's lines were extended into the Borough of Manhattan and the elevated railway lines in Brooklyn were operated through the Fourth Avenue Subway, and they also proposed to put quite a large sum of their own capital into the enterprise. The proposition appealed to me at once as being an excellent one, and I stated in my judgment the matter should be submitted to the Mayor for his suggestions. He lives in Brooklyn, knew the situation, and his suggestions would be of value. I called the Mayor on the telephone and arranged the interview. Mr. Williams went over there and submitted to the Mayor the plan and the map which he had drawn up, and gave it to him for his consideration.

Q. Did the Mayor say that was a poor system? A. He didn't say so at that time.

Q. Did he at any time say so? A. It is in my mind that he did express dissatisfaction at some time as to the plan.

Q. Didn't he say to Mr. Williams that they were not strong enough to rely upon them entirely? A. Not that I remember.

Q. Did he suggest that idea in some way approximately? A. Not to my recollection.

Q. Did he ever say that to you? A. He did not.

Q. Didn't he ever express the view that he could not rest upon the Brooklyn Rapid Transit Company's line? A. No.

Q. Did Mr. Williams ever tell you that the Mayor had said that in substance? A. He did not.

Q. Did you ever comment to the Mayor upon the lines of the question I just put to you? A. I did not.

Q. Will you please give us the substance of any conversation you had with Mr. Williams apart from the Mayor? A. Both before and after this time?

Q. After this time. A. I have no definite recollection as to the substance of any conversations with Mr. Williams subsequent to that time, although such a conversation took place perhaps.

Q. What was that? A. That was the latter part of May. At that time I had worked up a proposition whereby both of the railway companies were to participate in the transportation matters of the City.

Q. On the single fare? A. No.

Q. How much did the idea of the single fare enter into these transactions and negotiations in which you took part before the Brooklyn Rapid Transit Company? A. It assumed a very large part.

Q. Did the single fare close the present dual contract? A. I don't understand what you mean.

Q. Was it what brought about these contracts? A. I don't know.

Mr. MOSS. - You may be excused temporarily, Mr. Martin.

TRAVIS H. WHITNEY, being recalled, testified as follows:

Examination by Mr. Moss:

Q. Mr. Whitney, have you produced some papers here? A. Yes.

Q. Mr. Whitney, are these all file papers? You will remember I asked you some questions yesterday. Are these all file papers? A. That is a draft of a letter that was turned over to me by Mr. Harkness and Mr. Wilcox in connection with the application.

(Witness hands paper to counsel.)

Q. This paper which you just handed me is a file paper? A. I have had it in my custody as a part of the papers in connection with the Interborough Rapid Transit Company.

Q. Where? A. I have had that with certain other papers in the safe.

Q. Not in the regular files? A. No.

Q. This is a paper dated March 22nd, 1910, on the paper of the Interborough Rapid Transit Company, and it states "Theodore P. Shonts, president," and at the bottom it says, "Very respectfully, blank line, president." In the lefthand corner appear "Addressed to William R. Wilcox, chairman of the Public Service Commission." This is an unsigned letter, Mr. Whitney. What does it mean? A. My understanding of that was that that was a draft of a letter given to Mr. Wilcox to look over by Mr. Shonts as a proposal of the Commission.

Q. That is, Mr. Shonts was going to make a proposal, and in advance of his making a proposal he gives a draft of it unsigned to Mr. Wilcox to look it over, is that right? A. That is my understanding, and that following a series of conferences between them with reference to the proposition by the Interborough Rapid Transit Company, and I assume that they afterwards modified the terms.

Q. Up to March 22nd, 1910, that resumes — or do you presume, Mr. Whitney, that that letter shows the state of mind that existed between Mr. Wilcox and Mr. Shonts on that date? A. My understanding is that it probably showed the substance of the understanding of Mr. Wilcox.

Q. How should it then be sent to him by Mr. Shonts? A. To be returned to him with his confirmation.

Q. Then this represents Mr. Wilcox's idea more than Mr. Shonts'? A. No, I don't know that that can be said. I was at none of the conferences. It was simply that they had conferences and discussed an application from the Interborough Transit Company following the negotiations they had gone over for two or three years, and that this was sent as a suggestion to Mr. Wilcox personally to look over, to see whether it was substantially the result of those negotiations that they had talked about.

Q. At that time was there any proposition pending before the Public Service Commission on behalf of the Interborough Rapid Transit Company? A. No. There were previous propositions but I think they had all been declined.

Q. When after the 22nd day of March did any proposition come in formally? A. The one you referred to awhile ago.

Q. July? A. Yes.

Q. Is the July proposition any different from this paper of March 22nd? A. I am not sure of that. I have never gone over that carefully, Mr. Moss, or made the comparison in a detailed way. I think the one important difference between the two, that proposition I think involves the use of Company money and the July one involves the use of money in a different manner.

Q. This proposition of March 22nd, 1910, was altogether Company money, wasn't it? A. I wouldn't be sure about that.

Q. Largely Company money? A. Yes.

Q. Wasn't that a proposition? A. No.

Q. Wasn't this paper that come from the president's office to Mr. Wilcox, and which you have had charge of, a proposition? A. I am sure that Mr. Wilcox did not consider it because it was —

Q. What right had Mr. Wilcox to tinker with a proposed proposition of Mr. Shonts? A. Well, I suppose because they had been in conferences, and it was thought desirable —

Q. Well, Mr. Whitney, this letter never came out, did it? A. No.

Q. Here is something which Mr. Shonts was willing to do in March, 1910, using Company money and he submits an unsigned proposition which Mr. Wilcox receives, turns over to you and you hold privately, and it has pencil memorandums upon it. How does it happen that this paper has been held privately, never has been in the public files, never has been given to the public, and thereafter in July, 1910, there came out a proposition which involved the use of City money? A. I think that is a question which Mr. Wilcox will have to answer. I may say this, Mr. Moss, that this letter of July 5th, from the Interborough Rapid Transit Company was replied to by the Commission under date of July 12th. The Interborough Rapid Transit Company's letter was dated July 5th. It was transmitted, a copy went to the Mayor

and that was transmitted by him under date of July 6th. Under date of July 7th the Commission answered. I think that letter sets forth, in declining the Interborough Rapid Transit Company's offer in a detail way the reasons why the offer of July 5th was not accepted, or at least Mr. Wilcox's understanding of the reason why.

Q. Does that letter after July 5th, 1910, say anything about the use entirely of the Interborough's money? We will read this letter, which is as follows:

"July 7, 1910.

"Hon. W. J. Gaynor,
Mayor's Office, City Hall,
New York City.

"Dear Mr. Mayor:

"Your letter of July 6th, transmitting a communication from Mr. T. P. Shonts, president of the Interborough Rapid Transit Company, dated July 5th, came to hand duly. The Commission has also received a similar communication from Mr. Shonts.

"The present letter of Mr. Shonts is remarkable chiefly as indicating the radical change of position of the Interborough Company from that taken in its recent negotiations with the Commission. After the rejection of the Interborough's latest proposal in November, 1909, many conferences were had with the president of the Interborough Company upon the subject of subway extensions. The lines which the Commission believe should be built and which practically became the basis of negotiations as to terms were as follows:

"(1) *Seventh Avenue Extension.* A four-track line southerly from Times Square via Seventh avenue and other streets to lower Manhattan.

"(2) *Brooklyn Connection.* A two-track line connecting with the above through Maiden lane and other street in Manhattan; under the East river, Pineapple street and Fulton street, Brooklyn, to connect with the present subway near Borough Hall.

"(3) *Eastern Parkway Extension.* A four-track line to

connect with the present subway through Flatbush avenue and Eastern parkway to Nostrand avenue.

"(4) *Madison Avenue Extension.* A four-track line to connect with the present subway in Fourth avenue, through Madison avenue, under the Harlem river and into the Bronx; two tracks to connect with the Jerome avenue line and two tracks to connect with the West Farms division of the subway.

"(5) *Moving Platform.* A line to be built from Times Square to 14th Street under Broadway.

"(6) *Steinway Tunnel.* The line to be extended through 42d Street to connect with the subway at or about Seventh avenue; such line to be turned over to the city as part of the extensions.

"(7) *White Plains Avenue Extension.* A two-track elevated line to connect the present subway and to extend northerly through White Plains road to Becker Avenue.

"In the negotiation for the construction and operation of these lines the following terms and conditions ultimately came to be considered as the proper basis for an agreement:

"(*a*) The cost of constructing and equipping these lines to be borne by the Interborough Company without the use of the city's credit. The city to provide necessary real estate except that used for terminals and storage yards.

"(*b*) The ownership and title to all lines to be in the city.

"(*c*) The Interborough Company to surrender its rights under existing contracts for the present subway to a renewal of such contracts for the renewal term of twenty-five (25) years. All lines, including the present subway and the proposed extensions, to fall into the possession of the city upon a certain date not more than fifty (50) years from the date of the completion of the extension.

"(*d*) The city to have the right to terminate the contract for the operation of the above lines at any time after the expiration of ten years from the date of completion upon paying the company an amount not exceeding the cost thereof plus fifteen per cent. and decreasing year by year. The city

to purchase the equipment provided it should take over the extensions before the end of the lease.

"(*e*) All net profits arising from the operation of the above lines to be divided equally between the city and the company.

"(*f*) The company to operate any additional lines which may be constructed by the city as extensions to the system provided the operation of such extensions should not diminish the company's profits from its then existing system.

"As you know, these negotiations were very nearly brought to a successful conclusion, but at the last moment the directors of the Interborough Company objected to the proposed terms. We have understood that the terms were satisfactory to the interests that the Interborough Company expected to finance these operations and that such interests have not changed their position.

"A comparison of these routes and terms with the proposal just received shows that the Interborough Company has receded from the position taken in the recent negotiations with this Commission, and does not now offer as favorable terms as those previously made. The most striking points of contrast are as follows:

"1. The proposed extensions are *now* to be built with city money. The company is not to provide any funds except for additional equipment. The Interborough Company has repeatedly declared by letter, by public advertisement and by personal announcement that it would provide the necessary money without asking the city for a single dollar.

"2. The Board of Estimate and Apportionment has indicated that there will be presently available for rapid transit purposes less than $60,000,000. The Interborough Company states that the proposed lines would cost over $70,000,000. If the present proposal of the Interborough Company were to be accepted, the entire amount at present available for rapid transit purposes would be consumed. The utilization of the city's credit in this way would make impossible the construction by the city of any additional lines in Manhattan, in The Bronx, in Queens or in Brooklyn. The Loop

Lines, the construction of which was begun by our predecessors, would have to remain unfinished and subway connection with the new bridges would have to be abandoned, thereby decreasing their value and utility from the transportation point of view.

"3. The plan to utilize Lexington avenue from Fortieth street to the Harlem river has been before the Commission repeatedly, and as often it has been pointed out that the Commission would not permit the Interborough Company, under the guise of extensions, to interfere with the development of a broad, comprehensive and logical scheme of rapid transit. The Commission suggested that Madison avenue should be utilized instead of Lexington avenue, and at one time the Interborough Company had accepted this suggestion. It is clear that if the Interborough Company were to use a portion of Lexington avenue the whole Tri-Borough route would be disrupted, and it would not be possible at any future time to use Lexington avenue for a through route. On the other hand, the use of Madison avnue would not interfere with any other route and would leave Lexington avenue available for other lines.

"4. In several other respects the proposal is less favorable to the city than others that have been made. For instance, the company asks that it be guaranteed against loss. As you state, such a proposal does not seem tolerable. The company also asks that if the city takes over the road the company shall be paid the cost of the equipment plus fifteen per cent., apparently without regard to its condition and notwithstanding the fact that during the entire period of operation the company is to be allowed loss for depreciation before the city is to have any share of the profits.

"In view of the enormous profits that the Interborough Company is making from the city-built and city-owned railroad, we think that the company is under corresponding obligations to serve the public by extending its lines and giving additional facilities, and we consider that the terms which were under consideration in the previous negotiations are generally in accord with that obligation.

"We have understood that representatives of the city have been in consultation with the Interborough Company for some time, but after reading Mr. Shonts' letter, fear that they were not thoroughly acquainted with the history and scope of the previous negotiations.

"While the Commission will give due consideration to this or other offers of the Interborough Company, we do not believe that extensions to the Interborough system should be allowed to interfere with the completion of the Tri-Borough route, a portion of which is now under construction. The Commission is nearly ready to advertise for bids, and if the contracts are approved as to form by the corporation counsel it will probably be possible to insert advertisements and begin the distribution of the plans in about two weeks. Do you and the other members of the Board of Estimate and Apportionment believe that, pending the completion of negotiations and of the public discussion to which you have referred, work on the Tri-Borough route should be suspended or that advertising for bids should be postponed?

"The Commission desires me to thank you, and I desire to add my personal thanks, for the cordial appreciation in the last parograph of your letter of our efforts to obtain additional rapid transit facilities. As you know, this has been one of the most important subjects with which the Commission has had to deal and you also know the efforts that the Commission has made to increase and improve transportation facilities.

"Respectfully yours,
"(Signed) WILLIAM R. WILLCOX,
"Chairman."

Q. Now, Mr. Whitney, don't you think that the offer of Mr. Shonts of September, 1910, was his best offer? A. Offhand I don't recall the terms of that.

Q. Well, four tracks on each side using their own money. A. As I say, offhand I don't recall that offer.

Q. Whose pencil memorandum is this on this unsigned letter? (Counsel exhibiting paper to witness.) A. Some are Mr. Wilcox's and some are Mr. Coleman's.

Q. Was that letter as amended shown to Mr. Shonts or anyone? A. I don't know.

Q. Now, Mr. Whitney, you have there before you the unsigned letter of the president, dated March 22nd, 1910, which you say offers to do the work with the Company's money. There is in evidence the visit by Mr. Shonts with Mr. Campbell and Mr. Towns to the Mayor's home at St. James on April 22nd, 1910. And then the next step is the formal signed offer of July 5th, 1910, which proposes to do the work with City money. And in connection with that we have just had the testimony of Mr. Martin showing the conferences that he had as Mr. Gaynor's representative with Mr. Shonts. Now did you see Mr. Shonts at any time? A. No.

Q. Do you know of any conferences between Mr. Wilcox and Mr. Shonts? A. I knew that they were holding conferences.

Q. Were they holding conferences in March, April, May, June and July, 1910, or at any time within that period? A. I don't believe I could place them by months.

Q. Were any conferences within that period entirely between Mr. Shonts and the Mayor through Mr. Martin, as his representative? A. My recollection is that they had much more frequent conferences beyond that time.

Q. Didn't Mr. Wilcox practically drop out of the conferences after the date of that letter? A. That is very much a matter to be answered by Mr. Wilcox.

Q. So far as you know? A. I couldn't be sure. It may be true.

Q. Isn't it a fact that from about the time of that date that the conferences with the Interborough Rapid Transit Company were subsequently held by the Mayor and his representative? A. I should judge so, yes, sir.

By Mr. Moss.— Is Colonel Williams in the room?

Mr. Williams.— I am here.

Mr. Moss.— I ask you if you have brought the letter of May 23rd, 1911, addressed to Mr. William G. Morrissey, president of the Brooklyn Board of Real Estate Brokers, 169 Montague street, Borough of Brooklyn?

Mr. T. Williams.— I have that letter with me.

Mr. Moss.— I offer this unsigned letter in evidence. I ask the stenographer to see that that is spread upon the record.

"BROOKLYN RAPID TRANSIT COMPANY.

"W-H May 23, 1911.

"William G. Morrissey, Esq.,

"President, Brooklyn Board of Real Estate Brokers,

"169 Montague Street, Borough of Brooklyn.

"Dear Sir:

"I have your inquiry, based upon recent newspaper reports of a compromise in the subway situation, as to what I meant in my remarks at the Academy of Music meeting last week when I stated that the talk of compromise seemed to emanate from the 'branch office of the Interborough Company further up Broadway,' and located the source of such compromise rumors in the City Hall Park.

"I have no hesitation in replying frankly that in this reference I had in mind Mayor Gaynor.

"I had been visited that day (or the preceding day) by a gentleman who told me that I could speak to him as if he were the Mayor, and who brought to me a plan of division of subway territory which had been prepared after conference with the Mayor and the officials of the Interborough Rapid Transit Company. For the gentleman who brought this proposed compromise I have the highest respect. He is the Mayor's Commissioner of Bridges, and in ability, sound judgment and integrity I know of no public official who is his superior. We constantly have official relations with him and I have not the slightest doubt of the sincerity of his motives in assisting the Mayor in transit matters, but I told him frankly that we could not consider the subject of compromise. We had worked out with the city officials a plan which we believed to be best for the city's interests, and even though some other plan might give us more immediate financial return, we could not in justice to ourselves or the city consent to any belittling of that plan by way of compromise. I told him further that although I had no doubt of his motives and sincerity I did believe that the talk of compromise was put forth with the idea of inject-

ing delay and confusion into the situation and that we would have none of it.

"I do not mind saying to you that from the time last Spring when the Mayor took the subway matter out of the hands of the Public Service Commission and began negotiations directly with Mr. Shonts leading up to the offer of Mr. Shonts to the Mayor on July 5th, 1910, the Mayor has constantly and consistently advocated conditions of rapid transit development which were consistent with no proposal before the city authorities or suggested to them except the proposal of the Interborough Rapid Transit Company in the shape in which it may have stood from time to time. In his minority report to the Board of Estimate dated January 11th last he submitted arguments, which if they had prevailed, would have allowed no solution except the adoption of the Interborough offer of December 5th, 1910. This proposal is now regarded as so unfair to the city and so impossible of adoption by the city that it has been deemed wise by the company itself to enlarge it, although not changing its essentially wrong features.

"The Mayor opposed the McAdoo proposal as a competitive system with the Interborough and is opposing the Brooklyn Rapid Transit proposal.

"I dislike to speak of these matters, but inasmuch as the Brooklyn Rapid Transit proposal in its present shape realizes, far beyond any apparent possibility three months ago, the Mayor's expressed hope of a unified city transportation system, I must believe that his present attitude is based upon insufficient information and knowledge of our proposal. Otherwise he would not be urging a compromise which, more than anything else that has been suggested, makes impossible of realization a one-fare city system and establishes for an indefinite period in the future a two-fare system.

"I am conscious in making these statements to you (which you are at liberty to use if you desire), that I am subjecting the corporations which I represent to the possible hostility of the Mayor, not only in the immediate matter now pending before the Board of Estimate and Apportionment, but in other

matters which may affect the relations of the city toward the company. But we have started out in this campaign in a frank, open way. We have conducted our negotiations in the same spirit, and we have sought to accomplish our purpose only by a direct plea to the intelligence and fairness of the public, and, to the extent that the Mayor or any other official seeks to prevent the adoption of what we believe all fair-minded and disinterested men will unhesitatingly assert is the best transportation plan now before the public, we feel compelled by the same spirit of frankness to point out the source and the dangers of compromise suggestions which can only mean delay and confusion.

"We welcome open argument and criticism, but in justice to ourselves and to the hundreds of thousands of people whose hopes of transit relief have been raised by our proposal we feel that all suggestions tending to influence the result should be made in the daylight of public discussion, so that the people, as well as their representative officials, may be able to pass intelligent judgment upon the question.

"We cannot and will not put ourselves before the public as advocating openly a comprehensive plan of transportation relief and at the same time be negotiating privately for the adpotion of a lesser and more selfish plan.

"Very truly yours,

"T. S. WILLIAMS,

"President."

By Senator Lawson:

Q. In this correspondence that you have submitted to the Committe this morning, was the Board of Estimate and Apportionment ever taken into the confidence of the Public Service Commission or the individual Commissioners on this exchange of correspondence, that you know of? A. What do you mean?

Q. I mean preliminary to the signing of these contracts. A. Yes.

Q. In other words, the Board of Estimate and Apportionment was familiar with this correspondence leading up to the dual subway contract? A. Absolutely, yes, sir.

Q. Had this letter of March 22nd, submitted to Mr. Wilcox by

Mr. Shonts, had that letter ever been called to the attention of any of the members of the Board of Estimate of the City of New York individually or collectively? A. In that letter it was stated —

Q. But the question I asked you, and which I wish you would answer, did any one member of the Board of Estimate or all of the Board of Estimate, ever have submitted to them this particular proposition that is included in the letter of March 22nd? A. I don't know whether Mr. Wilcox wrote to them or not.

Q. You didn't? A. No.

Q. You don't know of any member having submitted it? A. No.

Senator Lawson.— Mr. Whitney, this Committee is here doing a part of the routine work of the Public Service Commission, and we understand that you have two places to file. You have formal and informal files. The informal files are those that constitute the correspondence containing complaints from citizens, taxpayers or correspondence handled by you with the railroad, and answer to these complaints. Those are informal complaints. Will you tell us what kind of a file this is which you have just produced here which is entirely new. What is the appellation or name of this file? You say you had those letters in your safe. Is this the third class of files?

The Witness.— No.

By Senator Lawson:

Q. What does this come under, formal or informal? A. This is a memorandum in connection with the formal files.

Q. Well, how do you class it? Are these the secret archives? A. There are no secret archives.

Q. We have been investigating matters here in the First District now for close to a year. A. For over a year.

Q. This is the first time that it has been called to my attention that this correspondence bearing on these important contracts that have not been found by this Committee in either formal or informal files. A. This is a paper that I produce in response to a request of Mr. Moss for all the papers in connection with obligations of the Interborough Rapid Transit Company. There is nothing secret about it and nothing to be ashamed of.

Q. Let me ask you, for the edification of the Committee: what would you term these files if we were seeking this information? What file would the Committee have to go to, formal or informal? Formal and informal files are not kept together, are they? A. They are kept together.

By Chairman Thompson:

Q. Tell us this: where was this paper that has just been produced? A. In the safe along with hundreds of others.

Q. If somebody comes in there and asks for the record of the contract, the correspondence, would this be given to them? A. If they ask as Mr. McNeal did in this case, they would be given it, yes, sir.

Q. Unless they specifically asked for it they would not get it? A. What do you mean?

Q. Unless they asked for it just like Mr. McNeal did, it would not be given out under a general request for correspondence between the Interborough Rapid Transit Company and the Public Service Commission in regard to this correspondence? A. You must remember that this was a draft of a letter.

Q. Mr. Whitney, why is it that we never knew about this letter before? A. This is the first time you ever asked anything of that kind.

By Mr. Moss:

Q. Did that ever appear among the printed papers? A. No.

Q. What is the classification you file that under? You don't keep all the papers in the Commissioners' office. A. Several hundred.

Q. What classification did you file that stuff under? What I am trying to get at is, supposing I went to your office and said "Mr. Whitney, I want some data relating to these contracts." What file would you direct your subordinate to get in order to give me this correspondence? A. I wouldn't direct them to get any files. I would tell them to bring in the application of the Interborough Rapid Transit Company.

By Chairman Thompson:

Q. Would that include that lettr? A. Yes.

Q. In whose custody was it? A. It was in the safe of the Commission.

Q. Under your control? A. Yes.

Q. What kind of a safe was it? A. I really don't know.

Q. Did it have a combination? A. It had a combination.

Q. Who had access to it? A. There was half a dozen people who had access to it.

Q. Who are they? A. Mr. Wright, Mr. Swollon and Mr. Rockstraw.

Q. Are they all assistant secretaries? A. No.

By Senator Lawson:

Q. Have you any correspondence in that safe preliminary to the contract with the Brooklyn Rapid Transit Company? A. No.

By Chairman Thompson:

Q. This was not put in the general record file, was it? A. No. When that letter was sent to me, Chairman Wilcox said to put that in the safe.

Q. Chairman Wilcox said that? A. Yes.

Q. Why did you put them in the safe? A. I assumed that his reason for that was that this not being a formal and complete application to the Commission and merely the draft of an application, he felt that this was a personal document turned over to him, and therefore not a part of the formal application, but it was given to me with that statement, that it was to be put in the safe. After he left I regarded it simply as an order to file.

By Mr. Moss:

Q. Why wasn't it returned to Mr. Shonts? A. I don't know.

Q. Then there was a distinction in putting it in the safe and filing it in the general file? A. There was no distinction to me.

Q. How much safe room have you got there? A. There are three or four safes.

Q. And are they full of papers? A. Yes.

Q. Are there other papers kept in the general files the same way as this? A. Any papers that are in the files will have reference on the files to the effect that these papers will be found in the safe.

By Senator Lawson:

Q. Are there any papers in the safe, Mr. Whitney, relating to the contract made with the New York Municipal Railway Company and the Brooklyn Rapid Transit Company or any of their subsidiaries up to the time the new plans were perfected for the Borough of Brooklyn relating to the railroads in the Borough of Brooklyn? A. No.

Q. None at all? A. No.

Q. There was some preliminary correspondence between Mr. Williams and the Public Service Commission. You have not got those papers here? A. No. I was only asked for the Interborough Rapid Transit Company.

Q. Where is that correspondence? A. That is in the regular files.

By Mr. Moss:

Q. Do you know whether all of the proposals that were submitted at various times were the results of conferences engaged in between either the Mayor or the Commissioners and the persons who submitted them? A. I don't think all of them were the result of previous conferences.

Q. How many of them were the results of previous conferences? A. I should say the ones from 1910 down.

Q. Both companies? A. I am not sure if the first Brooklyn Rapid Transit Company's application was the result of conferences.

Q. Did the Public Service Commissioners know that Mr. Shonts had been down to see the Mayor? A. I really don't know.

Q. Did the Public Service Commissioners or did you know that Mr. Shonts had been down there? A. I didn't know.

Q. Did you know Mr. Shonts had seen the Mayor? A. I think Mr. Wilcox at one time told me he had learned that Mr. Shonts had been down to St. James.

Q. You knew that the proposition of July 5th came to your Commission through the Mayor's act, didn't you? A. The duplicate; yes, sir.

Q. Did you at the same time receive a similar letter? A. The same day, I believe.

Q. Ultimately the plan which was adopted by the Mayor's consent did allow the use of City money, didn't it? A. Yes.

Q. And did let the two companies in? A. Yes.

Q. Do you know how those two companies got together and approached the Mayor and the Public Service Commissioners and all of the other officials so as to make them acceptable to their plans? A. No, sir.

Q. Do you know how that came about? A. I simply know there were long series of conferences held.

By Chairman Thompson:

Q. Do you remember a Mr. McNeil, who was connected with the Committee last winter? A. Yes. He made an examination of the office there.

Q. Did he see any of the files that were in any of the safes at this time? A. I don't remember of any of the files, Senator, that he did not see. If there is any particular paper that is in the safe there will be a notation on it to that effect.

Q. Is there any such notation on this letter? A. No, sir, because it never came before the Commission.

Q. Are there any other of the papers in the safe? A. No.

Q. That is the only one? A. Yes.

Q. Did you know it was there? A. Yes.

Q. You knew it was important in reference to this investigation, didn't you? A. Yes.

Q. Why didn't you call it to our attention before today? A. When before did you have this matter up?

Q. Why, we have had it up since last September. A. I didn't notice it.

Q. Was it in response to three or four questions that Mr. Moss asked you yesterday that you produce this letter? A. No.

Chairman Thompson.— I think I will appoint a subcommittee for the purpose of examining these records.

Q. You are perfectly willing, are you not, Mr. Whitney, that Mr. McNeil may go through those records? A. I have no objection.

Q. You have confidence in his ability and honesty? A. Yes, sir.

Q. Have you ever said anything to the contrary of anyone connected with our Committee? A. I spoke to Colonel Haywood, who was your counsel.

By Mr. Moss.— I think Mr. Chairman, before you take a recess that this letter which I have Just opened of May 23rd, 1911, addressed to Mr. William G. Morrissey should be read into the record.

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which we believed to be best for the city's interests, and, even though some other plan might give us more immediate financial return, we could not in justice to ourselves or to the city consent to any belittling of that plan by way of compromise. I told him further that although I had no doubt of his motives and sincerity I did believe that the talk of compromise was put forth with the idea of injecting delay and confusion into the situation and that we would have none of it.

"I do not mind saying to you that from the time last spring when the Mayor took the subway matter out of the hands of the Public Service Commission and began negotiations directly with Mr. Shonts leading up to the offer of Mr. Shonts to the Mayor on July 5th, 1910, the Mayor has constantly and consistently advocated conditions of rapid transit development which were consistent with no proposal before the city authorities or suggested to them except the proposal of the Interborough Rapid Transit Company in the shape in which it may have stood from time to time. In his minority report to the Board of Estimate dated January 11th last he submitted arguments, which if they had prevailed, would have allowed no solution except the adoption of the Interborough offer of December 5th, 1910. This proposal is now regarded as so unfair to the city and so impossible of adoption by the city that it nas been deemed wise by the company itself to enlarge it, although not changing its essentially wrong features.

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of realization a one-fare city system and establishes for an indefinite period in the future a two-fare system.

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"Very truly yours,

"T. S. WILLIAMS,

"President."

Mr. Whitney.— In order that there may be no misunderstanding over this mysterious file of the Public Service Commission I think it is only fair for me to say that something like ten days ago, or so, I had a talk with you in which I offered to be of any

assistance to you in connection with these matters, and in connection with this subjcet, that I could. In connection with the subject of the Interborough Rapid Transit Company's plans I called your attention to this letter of March 22nd.

Mr. Moss.— You called my attention to this letter yesterday.

The Witness.— I think it would be a good idea, Mr. Chairman, in order to clear up the apparent question of these files, that you appoint that sub-committee that you spoke of, and let them come over there this afternoon and go through these files. I would be glad to have them come right over and look at everything.

Chairman Thompson.— I don't want any misconception about the situation at all.

The Witness.— There was one as the result of your question.

Chairman Thompson.— That's the situation, Mr. Whitney, that has not been brought about by any member of this Committee. It really looks peculiar that a letter as important as this should be found in the safe in the office with no notations on the file. I might say that we have complained of a sort of a lack of assistance to this investigation by the Public Service Commissioners. Of course, I assume they would hardly want to personally assist in putting themselves out of office. That is a very human and natural instinct. At the same time their official duty required them to give us all the help and assistance in the investigation that was at their command, and there is no question of personality in this with me. I take this occasion to say I have always been impressed with the delightful character of the secretary of the Public Service Commission. I am only glad that you beat that bill away back in 1904. There are no personal feelings whatsoever.

The Witness.— Senator, in order to be perfectly frank, I think you can draw a distinction at least, between me aid any commissioner that you are talking about. If you are out to do something to put me out of office or out of public life I will furnish you all the correspondence, all the testimony, all the help you would want on any subject.

Chairman Thompson.— It isn't a question of putting you out of

office, Mr. Whitney. It is merely a question of getting at the facts. There has been some question about your going into further office just now.

The Witness.— That is of more importance to you than it is to me.

Chairman Thompson.— With that statement we will suspend now until 2.30 P. M.

The meeting thereupon adjourned until 2:30 P. M.

AFTERNOON SESSION.

Meeting called to order by Chairman Thompson at 2:45 P. M., a quorum being present.

GROSVENOR H. BACKUS, being duly sworn, testifies as follows:

Examination by Mr. Moss:

Q. Mr. Backus, what is your occupation? A. I am a lawyer.

Q. Practicing in the City of New York? A. Yes.

Q. Have you been in attendance at the various sessions of this Committee? A. Some of them.

Q. In whose interests have you been present? A. My own.

Q. Have you any interest connected with this investigation? A. I was for upwards of three years an assistant counsel to the Public Service Commission, and I have been interested in following the course of the examination.

Q. When did you cease to be counsel to the Public Service Commission? A. In February, 1911.

Q. Did you have any knowledge of the subway propositions? Were you officially connected with them? A. No, they were all in Mr. Harkness' office. I had no connection with them.

Q. Under whom were you serving? A. I was appointed by Justice Blackman, and I continued to serve under Mr. Coleman.

Q. Where do you live, Mr. Backus? A. Englewood, New Jersey.

Q. Where is your office, Mr. Backus? A. 15 Broad Street.

Q. Are you alone or associated with anybody? A. I am alone. I was formerly associated with Mr. Freshman, who is now in the Corporation Counsel's office.

Q. Do you remember the sessions of the Pugo Committee? A. I do.

Q. Did you attend any of those sessions? A. I did.

Q. Did you do any work in connection with that Committee? A. Yes.

Q. For whom? A. I think I was employed by Mr. George C. Case.

Q. Do you know whether or not you were employed by him? A. That's my recollection.

Q. Whom did they represent? A. They represented Mr. J. P. Morgan, Senior.

Q. And did you attend some of the sessions in Washington? A. I did.

Q. And you attended in the interests of J. P. Morgan through Mr. Case? A. Yes.

Q. Have you been attending these sessions in the interest of Mr. Case for Mr. Morgan? A. No.

Q. In the interest of anybody? A. None other but my own.

Q. How long have you been attending these sessions? A. I should say about two weeks.

Q. Have you made notes of any of the meetings? A. No.

Q. Now the Committee has asked to call you on the stand, Mr. Backus, on account of a little circumstance that happened while the Committee was still in the room just before recess. You observed or heard the conversation, or some part of the conversation between Colonel Timothy Williams and myself, didn't you? A. I did, the latter part of it. I didn't hear how it started.

Q. You stood in the middle of the room here listening, did you not? A. Yes, sir.

Q. You applied an epithet to me, didn't you? What did you call me? A. Why, I have expressed my apologies, and consider my remarks were not becoming a gentleman and a lawyer.

Q. The Committee thinks it has something to do with this. A. I should prefer not to repeat it, Mr. Moss.

Q. You must answer the question.

Chairman Thompson.— Yes, Mr. Backus, I direct you to answer the question.

A. The Committee was not in session at the time. I don't think they have any right to compel me to answer. I will say the language was unparliamentary. I have expressed my apologies to you and you accepted them.

By Chairman Thompson.— Is it a fact, Mr. Moss, that personal apologies have passed between Mr. Backus and you?

Mr. Moss.— What Mr. Backus did was that he met me in the hall some time afterward and expressed his sorrow for the epithet that he gave to me. I don't care to accept it.

Chairman Thompson.— I am going to explain something to you, Mr. Backus. This Committee is a legislative body, as you no doubt know from your experience with previous committees, as you have already testified to. Now in order to ask questions we engage counsel, who becomes the agent of the Committe, when the Committee is in actual session or when it is not. He voices the sentiments of the Committee. Therefore language used toward the counsel of the Committee is understood by the Committee to be in reference to the Committee itself because it would only be used in the direction of the Committee. Therefore it beomes important. I would like to know about this affair. I would like to know what it was and want it on the record. Mr. Backus, you will have to answer the Chairman.

The Witness.— I turned to a gentleman who was standing beside me and said, "Isn't he a loafer."

Q. What did you mean? A. Really, Mr. Chairman —

By Chairman Thompson:

Q. Well, what did you say? A. "Dammed loafer."

Q. Is that all? A. That is my recollection.

By Mr. Moss:

Q. Then when you repeated it you added another word, didn't you? A. I don't think I did. You asked me if I called you something and I said yes.

By Chairman Thompson:

Q. Well now, Mr. Backus, what was it? If we are going to have a part of it we are going to have all of it. Didn't you say he was a God dammed loafer?

A. I don't think so.

Q. What did you mean by that? A. I meant that I thought his treatment of Colonel Williams was extremely ungentlemanly.

Q. Why did you say that? A. I was rather warm.

Q. What is a loafer? A. I don't know how to define it except in the terms of itself.

Q. That is a man that has no business and stays around places with nothing to do, isn't it? A. Not in the original explanation of the term.

Q. Well, what is the original explanation of the term? A. I should say a person that was extremely ungentlemanly.

Q. That is your understanding of it? A. Yes.

Q. Where were you brought up and educated? A. In Brooklyn.

Q. And your idea is that a loafer means an ungentlemanly person. Is that as far as you would characterize it? Isn't it a fact, Mr. Backus, that the real meaning is it is a man that has no vocation? A. I should say not.

Q. Well, the Committee so understand it. Now I want to know of you if there is anything about Mr. Frank Moss by which he could be described a loafer in any acceptance of the term. A. I think the language was extreme and discouterous in any sense of the use of it. I think he was ungentlemanly to Mr. Williams.

Q. But beyond that there are no characterizations of a loafer of Mr. Moss. Now I want you to apologize to the Committee for having used that term to Mr. Moss. A. I am very glad to apologize. I am sorry I said it.

By Mr. Moss:

Q. You referred to a conversation between Colonel Williams and myself which you say provoked you to this outburst. Did you hear Mr. Williams call me a God damned liar? A. No, I did not.

Q. Was my response, which you thought was that of a loafer,

"We are not down south, and all I can call you is a comedian?" A. That was part of it.

Q. Who was it that provoked the discussion? A. I don't know.

Q. Did you see Mr. Williams come to me and threaten to sue me? A. I heard some reference to it.

Q. As a matter of fact, I want to ask you this, Mr. Backus: didn't you the other day, on the day that Mr. Harkness was under investigation, refer to the Chairman of this Committee in similar terms? A. I don't think so.

Q. Didn't you speak to Mr. Harkness and compliment Mr. Harkness for standing up as a witness, and didn't you apply in that conversation to Mr. Harkness an improper epithet regarding Mr. Thompson? A. I don't think I did.

Mr. Moss.— Mr. Harkness, will you please answer a few questions.

LE ROY HARKNESS, being recalled, further testified as follows:

Examination by Mr. Moss:

Q. Do you remember Mr. Backus speaking to you after your testimony one day and giving you some words of commendation for standing up and defending Mr. Cravens? A. No, sir. I think that afternoon, as I remember it, while Mr. Cravens was making his explanations on the stand and while I was standing out in the hall, I think talking to Mr. Perley Morse, Mr. Backus came up and said something to me. I don't remember what it was.

Q. Do you remember the day that you got a little unpleasant when Mr. Cravens was on that stand? A. I do.

Q. Did you meet the witness on that date? A. He said something to me, but I do not remember what it was.

Q. Do you know this man? A. Mr. Backus served for some years on the staff of the Commission.

Q. Do you know him as a representative of Mr. Morgan? A. No, sir. I don't know what his affiliations are.

Q. Did you know that this man had worked in the Pugo case? A. I have heard so.

Q. Did you hear what he said to you that day? A. I may have heard it but it is something that I did not pay much attention to and it slipped my mind entirely.

Q. Do you say you heard it and forgot it or you never heard it? A. I probably did hear but I had other things on my mind and didn't pay much attention to it.

Q. To refresh your recollection; didn't this man say to you in substance, "It's about time somebody got after that dirty loafer?" A. No, sir.

Mr. Moss.— (Addressing Mr. Backus) Did you say that?

Mr. Backus.— I have felt very critical in some instance to the Committee, but I never used any such expression as that.

Mr. Moss.— Nor that in substance?

Mr. Backus.— No, sir.

Mr. Moss.— Did you use the word blackguard?

Mr. Backus.— I may have.

Mr. Moss.— In relation to the Chairman?

Mr. Backus.— No, I don't think so.

Mr. Moss.— To Mr. Harkness with relation to the Chairman of this Committee?

Mr. Backus.— I may have.

Mr. Moss.— Well, did you?

Mr. Backus.— I have felt so at times.

Mr. Moss.— Well, did you make the remark?

Mr. Backus.— I really don't remember.

Mr. Moss.— Well, what do you say?

Mr. Backus.— I have no recollection. I think that the thing I was really angry about when I made this remark was the aspersions that were cast on Mayor Gaynor this morning. I though they were extremely improper.

Mr. Moss.— By whom were they cast?

Mr. Backus.— I think by the counsel to the Committee.

Mr. Moss.— How?

Mr. Backus.— In the propounding of unfair and incomplete questions.

Mr. Moss.— State one.

Mr. Bacgus.— I have no record of the testimony. That was the impression.

Mr. Moss.— Have you taken notes here in the last two weeks?

Mr. Backus.— No.

Mr. Moss.— Not a note?

Mr. Backus.— No.

Chairman Thompson.— Well, you haven't any right to sit there and criticise any question that you don't remember. Now I will make you apologize again. Did you ever make notes in this room of the hearings of this Committee?

Mr. Backus.— I don't think I have. I have had no occasion to make notes.

Mr. Moss.— I want to have it understood by you, Mr. Backus, that I never ask a question unless I have some information which justifies me in asking the question. Now I am going to ask you a question, Mr. Backus. Did you mark down what you heard at this hearing?

Mr. Backus.— No.

Mr. Moss.— Have you not been doing it for some person?

Mr. Backus.— I have not.

Mr. Moss.— You can't remember any questions then this morning?

Mr. Backus.— I cannot pretend to give the questions.

Mr. Moss.— Then don't criticise any question that you cannot remember so as to point it out to us.

By Chairman Thompson:

Q. Are you as a lawyer being paid, or have you been in the last two or three weeks by this firm that you mentioned? A. I have no claim on anybody.

Q. You are out of work? A. No.

Q. Why is it that you stay here so much? A. I have been interested here in following the proceedings.

Q. Then you have no engagement with anybody to report this proceeding? A. No.

Q. Just your own interest? A. Yes.

Q. You have an interest that would not be satisfied by reading the newspaper alone? You are a lawyer with how many years' experience? A. Eighteen, I think.

Q. Eighteen years' experience with the legal profession and you have time to come here every day with the newspapers telling what it is, and still you are not retained by anyone who is interested? A. No.

Q. That is all.

TIMOTHY WILLIAMS, being duly sworn, testified as follows:

Examination by Mr. Moss:

Q. Mr. Wiliams, you are president of the Municipal Railway? A. I am.

Q. And the Brooklyn Rapid Transit Company? A. I am.

Q. And you were in attendance today, this morning, under subpoena of the Committee and by request? A. I was.

Q. Just for the sake of the record I want to ask you this question. At the close of the session this morning, and while members of the Committe were still in the room, did you come to me in a public way and threaten me with a suit? Now did you or did you not? A. No, I didn't threaten you with a suit. I want to say this, Mr. Chairman —

Chairman Thompson.— No, you just answer counsel's questions, Mr. Williams. We want to hear both sides of it.

The Witness.— Then you don't want the truth.

Q. Can you tell it?

Chairman Thompson.— All you have to do is to answer the question. If you want to explain you may do so afterwards.

Q. Did you say to me that you believed the Committee as a committee were immune under the Constitution, but that counsel were not immune even for questions that might be asked, and that you would hold me to legal accountability for the questions that I would ask? A. In substance, yes.

Chairman Thompson.— Now, Colonel Williams, you answer these questions as counsel puts them to you.

The Witness.— I'll answer them as I please.

Chairman Thompson.— Mr. Stenographer, you make me a copy of that record, and bring it up to the hotel tonight. I am not going to fool with this situation, Colonel. This is an investigation by a committee of the Legislature of the State of New York.

The Witness.— Fooling with it is the last thing I want to be done.

Chairman Thompson.— When you get through answering his questions I am going to let you make any statement you want. You could advise Mr. Moss personally, and it is a matter of personal privilege for him to ask you questions, and I am going to permit him to do so.

Q. Now, Colonel Williams, I think you can answer my questions. Let us keep cool about this matter. I am perfectly cool. A. Dishonest men can keep cooler than honest men.

Q. Do you mean by that that you are the honest man and I am the dishonest man? Do you mean to say that I am the dishonest man? Now tell me what you mean. Don't hedge. A. The statement is a general remark that is proper, I think.

Q. What? That you are honest and I am dishonest? A. I didn't say that.

Q. Didn't you go further than your statement of a minute ago and didn't you call me a damned liar? A. No.

Q. Did you not state what I have just said? A. I have answered that question.

Q. I will see if I cannot refresh your recollection. Didn't you call me a damned liar? Didn't you call me a damned liar and didn't I tell you we were not down south, and the most I could say was that you were a comedian? A. Apparently you don't want the truth.

Chairman Thompson.— You may make any statement that you wish afterwards, Colonel Williams, but we would like to have you answer the question. All the newspapers will have it. We will get it before they go to press.

Q. Did you call me a damned liar? Did I answer you by saying we were not down south and all I would say about it was that you were a comedian? A. I have answered the first part of the question that I did not call you a damned liar. As to the second part of the question, I think you did say something to that effect.

Q. Are you quite sure you said to me if I had given out an interview I was a liar? A. I said if you gave out what appeared in the New York American, which I held in my hand and which I showed to you, that what you gave out was a damned lie.

Q. You assumed then that I had given a statement to the newspaper? A. Well, I am rather inclined to think that newspaper men generally are honest and tell the truth. And inasmuch as this statement appeared in the paper I think it was authorized.

Q. You didn't ask me if I had given out a statement? A. I did not.

Q. Didn't Mr. McNeil of our Committee tell you that before you took any position or gave any statement you should consult the stenographer's record and se what actually happened? A. I don't think he did. In the first place, we have not been able to get the stenographer's record.

Q. By the way, were you ever a colonel? A. Yes.

Q. Did you have command of a regiment? A. No.

Mr. Moss.— The point of it is this, Mr. Chairman, we might as well have it out. Now I meet my duty and try to do it at all times. I have met bigger men than Colonel Williams. I have been living

in this community a long time, and I want the Colonel and everybody else to know this. You will find all that I said about the Brooklyn Rapid Transit Company in the record.

Mr. Williams.— Can we get the record?

Mr. Moss.— Now it is my duty to ask questions and I very seldom ask them unless I have information upon which they are based. I know what is right and what is wrong. My appearance in this committee is accidental. I didn't seek it. It is work that I don't enjoy altogether. I want to say to you, and I am looking right at you, Colonel, you can go ahead and sue or you can have your able bodied assistants do anything else that they like. I am afraid, Mr. Senator, we have struck a tender place.

Chairman Thompson.— This has been a matter of personal privilege to counsel. I told you, Mr. Williams, I would allow you to make a statement and I shall.

Mr. Williams.— Mr. Chairman, there is nothing so sacred to a man who appreciates his reputation as imputations against his honesty, nor to any honest corporation is there anything that appeals so strongly to the officers of an honest corporation as accusations against the honesty or the faithfulness of that corporation.

Chairman Thompson.— You haven't Mr. Moss in mind now, have you?

The Witness.— Now, Mr. Chairman, you said I could make a statement. I just want to finish my statement.

Chairman Thompson.— All right, Mr. Williams, so ahead.

The Witness.— From the time that this Committee was first established and began its investigation, at different times there have been emanating from its chairman, emanating from the newspapers, from some source that could only be attributed to the Committee or its counsel, various accusations hard to reply to because they were not sufficiently definite but reflecting in some way upon the integrity of the bookkeeping or the methods of the Brooklyn Rapid Transit Company and its subsidiary companies and upon its officers. You have not put us on the stand. You have

been an organized committee for nearly a year, perhaps more than a year. You called me last spring and I went on the stand and at your request I expressed my views about various subjects, and it was apparently painful for you to listen to them at that time.

Chairman Thompson.— You must strike that from the record. I want you to apologize.

The Witness.— You told me that I could make a statement, Mr. Chairman.

Chairman Thompson.— I told you that you could make a statement, but I want to say to you as chairman of this Committee, one of the members of the Senate, that when you make a statement that I said that to you as a senator of the State of New York that you stated something that was not true, and you knew it when you stated it.

The Witness.— I don't know whether it was painful or not. Well, after I had read that letter —

Chairman Thompson.— What letter?

The Witness.— The letter you have just read. When I submitted it to you you sat down and stated to me, "Are you going to read all that?" That gave me the impression that what I had to say was somewhat painful to you, and if it wasn't I cheerfully apologize for the suggestion. Now for a whole month you have had over in our office an investigator who has been going through our records from beginning to end, every paper that he wanted to see, every letter that he wanted to see, every record which books have he wanted to see, we have let him have. Even my personal correspondence has been turned over to his inspection. What he has found I don't know, but I do know he won't find a suggestion of graft or corruptness or anything that savors of wrong-doing.

Chairman Thompson.— Then you should not worry.

The Witness.— I am not worrying. When either the chairman of this Committee or its counsel comes out in the newspapers and makes insinuations, why then I, as a representative of that

corporation, will stand up for that corporation and will reply in my own way. I saw in the newspapers a statement in general to the effect, and attributed to Mr. Moss, that this Committee hopes in some way and expected to in some way identify the $100,000 which the Brooklyn Rapid Transit Company paid me for my services in the subway matters with the million dollars which was paid to the South Brooklyn Railway Company for giving to the City of New York a possible way out of the difficulties in which they were in regarding the subway contracts. When I got to the office I had an appointment with your investigator, and I want to show you the stenographic record of that interview, because it was had at his request and this is the stenographic record.

(At this point Colonel Williams reads into the report the above-referred to interview.)

And at the close of this hearing, after you, and I think most of the other members of the Committee, all of them as far as I know, had gone, I addressed myself to Mr. Moss and said to him, pointing to that article in the America, that if he had given out any such statement it was a damned lie, and I repeat it now, and I have the authority of your own investigator to that effect. Now if he says he didn't give it out, I will of course say it wasn't a damned lie. I want to say further, Mr. Chairman, this Committee is immune by the Constitution of the State of New York from any kind of nuisance or foul language that you might say or might have indulged in. I don't understand, however, that the Constitution gives your counsel immunity from making similar remarks, and as a representative of the corporation which I represent, I want to say, as a man who has been honest and for a corporation that has been honest, and that has nothing to fear from your Committee, or any other committee, that if they do make these fould accusations we are going to reply to them. We are going to reply to them in such way as we see fit.

Chairman Thompson.— We don't expect your co-operation in this investigation at all.

The Witness.— We have given it.

Chairman Thompson.— You will probably get your name in the headlines for this, Mr. Williams.

The Witness.— That probably is not of as much importance to me as to some others.

Chairman Thompson.— Well, Mr. Williams, we are going to make, and you are going to be investigated whether you want to be or whether you don't.

The Witness.— We have welcomed investigations.

By Mr. Moss:

Q. I want to talk to you, Mr. Williams, about this letter dated May 23rd, 1911, addressed to Mr. William G. Morrissey. "I have your inquiry, based upon recent newspaper reports of a compromise in the subway situation, as to what I meant in my remarks at the Academy of Music meeting last week when I stated that the talk of compromise seemed to emanate from the branch office of the Interborough Company further up Broadway, and located the source of such compromise rumors in the City Hall Park."

"I have no hesitation in replying frankly that in this reference I had in mind Mayor Gaynor." Will you please explain that. What did you mean when you said that? A. I think the letter explains itself.

Q. I think not. You say you have no hesitation in replying frankly that the branch office of the Interborough Rapid Transit Company was further up Broadway, and that you had in mind Mayor Gaynor. Did you mean to say that Mayor Gaynor was representing the interests of the Interborough Rapid Transit Company? A. I meant to say that the Mayor had apparently been suspecting the acts of the Interborough Rapid Transit Company in all this subway agitation.

Q. So much so that you spoke of his office in the City Hall as a branch of the Interborough Rapid Transit Company. Why did you use that expression? A. Well, of course I didn't mean that in a literal sense. I thought that the Mayor and the Interborough Rapid Transit Company people seemed to be in quite

close communication on transit matters, and apparently he spoke for them, as often as they spoke for themselves.

Q. What had you learned which caused you to make that statement? A. Oh, various conferences from time to time that were given out by the Mayor and the attitude that he had publicly taken on the subject.

Q. Do you mean that he had espoused the cause of the Interborough Rapid Transit Company as against the Brooklyn Rapid Transit Company? A. Yes.

Q. Do you remember the visit of Mr. Martin? A. Yes.

Q. What did he say to you? A. The conversation, of course I cannot remember all of the conversation, but in a general way he came to me with a compromise proposition, stating that I could talk to him as if he were the Mayor, and that this compromise proposition would, in his judgment, go through if I would approve of it. I turned it down.

Q. That was a compromise between what interests? A. Between the Interborough Rapid Transit Company and our interests.

Q. Did he tell you that a plan of division had been prepared after a conference with the Mayor and the officers of the Interborough Rapid Transit Company? A. As I remember, yes.

Q. Then they had assumed to lay out a plan of the division of territory and Mr. Martin's visit to you was to get you to enter into that plan, isn't that so? A. So I assumed.

Q. Do you remember how the lines were to be divided up? A. I don't recall. I paid very little attention to it.

Q. Well, I just want to quote from your letter, Mr. Williams. "I do not mind saying to you that from the time last spring, when the Mayor took the subway matter out of the hands of the Public Service Commission and began negotiations directly with Mr. Shonts leading up to the offer of Mr. Shonts to the Mayor on July 5th, 1910, the Mayor had constantly and consistently advocated conditions of rapid transit development which were consistent with no proposal before the city authorities, or suggested to them, except the proposal of the Interborough Rapid Transit Company, in the shape in which it may have stood from time to time." Did you make that statement with the various things that have happened clearly in your mind? A. I did.

Q. And you summarized them in this statement? A. Yes.

Q. You further say "The Mayor opposed the McAdoo proposal as a competitive system with the Interborough and is opposing the Brooklyn Rapid Transit approval." What did you mean by that? A. I meant exactly what I said.

Q. What did you mean to insinuate by that? A. I didn't mean to insinuate anything. I made a direct statement.

Q. You never do insinuate? A. Not as some people do.

Q. Well, I will quote again: "The Mayor opposed the McAdoo proposal as a competitive system with the Interborough and is opposing the Brooklyn Rapid Transit proposal." Didn't you mean to insinuate that the Mayor was opposing anything that was not Interborough Rapid Transit Company? A. I didn't mean to insinuate it. I said it positively, which was true.

Q. You meant then that the Mayor was so committed to the Interborough Rapid Transit Company that he was opposed to the Brooklyn Rapid Transit Company's plans and the McAdoo plans or anything else? A. That was my opinion.

Q. You state further: "Otherwise he would not be urging a compromise which, more than anything else that has been suggested, makes impossible of realization a one-fare city system and establishes for an indefinite period in the future a two-fare system." Wasn't that really the point of, as you understood it, the point of the Mayor's preference for the Interborough Rapid Transit Company on the question of the plans? A. That was one of his public statements, but of course it was always considered impractical, because a great part of the population of Queens and Brooklyn could not possibly be accommodated by any offer then proposed by the Interborough Rapid Transit Company or by the Mayor or by anybody else without the imposition of two fares.

Q. You believed if the Interborough Rapid Transit Company's plan went through it would mean financial prosperity or financial income to the Interborough Rapid Transit Company at the expense of the people of Brooklyn and Queens? A. I wouldn't put it that way. I thought they were quite capable of looking after their own financial interests.

Q. And if the Interborough Rapid Transit Company's plan went through the people of Brooklyn and Queens would have to

pay the double fare and you might be out so much business? You state further here, Mr. Williams, "I am conscious in making these statements to you (which you are at liberty to use if you desire), that I am subjecting the corporation which I represent to the possible hostility of the Mayor, not only in the immediate matter now pending before the Board of Estimate and Apportionment, but in other matters which may affect the relations of the City toward the Company." Did you feel that the Mayor was so much involved with the Interborough Rapid Transit Company that he was likely to take hostile measures against your Company? A. He actually did.

Q. What did he do? A. He got up in public against it. He said we had no money to finance the subway proposition. He said our railroad was a ramshackle road, to use his particular adjective. He said that our equipment was small and bad and generally that we were the scum of the earth, and couldn't handle such a proposition.

Q. Well now, how do you reconcile the fact that Mr. Martin came to you as a representative of the Mayor and proposed a compromise which means practically the division of the territory between the two railroads? You turn it down, and then do you say that the Mayor began publicly to condemn your corporation in the way that he had done before? A. I don't want to say in relation to that matter. I think it was in relation to other matters. Soon after we submitted our proposition in the early spring of 1911, I should say about four or five weeks from that time, the Mayor did show some signs of opposition and he continued that opposition up to the very last.

Q. Was it after Mr. Martin's visit that he called your structure a ramshackle structure? A. I am not sure.

Q. Was it after that that he referred to your corporation as being insufficiently financed? A. I am not sure as to the chronology of the date.

Q. On this date, May 23rd, 1911, if Mr. Martin correctly carried the Mayor's message, he was perfectly willing that you should enter into an even division of the territory between you and the Interborough Rapid Transit Company, whatever the state of your finances were? A. Apparently. Of course I want to say that I

think Mr. Martin was perfectly sincere in what he did. I have always found him to be a very straightforward and intelligent man. I thought at the time and I think now that that suggestion, division of territory, even though we had accepted it, would never have gone through.

Q. Were you suspicious of the proposition, of the Mayor, if you should come into this agreement? A. I was not as suspicious of him as I was of my friends in the Interborough Rapid Transit Company.

Q. You thought the Interborough Rapid Transit Company was behind the Mayor? A. I thought they were working in collusion; working in harmony, I might say.

Q. Do you mean collusion or harmony? A. I think harmony is sufficient.

Q. Did you know that at the time of this letter, from that date until July, 1910, negotiations were practically in the hands of the Mayor and not in the hands of the Public Service Commission? A. I only knew what was currently understood at the time.

Q. Was that currently understood? A. As I remember the situation the Public Service Commission were dealing with the Interborough Rapid Transit Company and the Mayor apparently was dealing with them independently with the Public Service Commission.

Q. Now, directing your attention to the time from March to July, 1910, did you have any conferences with any members of the Public Service Commission? A. I think not. My interest in the matter only became acute after I became president of the Brooklyn Rapid Transit Company in February, 1911. I think there were some preliminary conferences in which I may or may not have taken part in reference to the Center Street loop, but nothing ever came of that.

Q. Well, ultimately the Mayor came to the plan of recognizing both corporations. You don't understand that he opposed the final contract, do you? A. No, he didn't oppose the final contract.

Q. He was active in bringing about the adoption of the plan, wasn't he? A. I am not so sure as to that.

Q. Didn't he have something to do with the report that recommended the dual plan? A. No, I think not. I think he was not

a member of the Committee. I don't think he had anything to do with the report.

Q. I would like to again refer to your letter, Mr. Williams: "We cannot and will not put ourselves before the public as advocating openly a comprehensive plan of transportation relief and at the same time be negotiating privately for the adoption of a lesser and more selfish plan." What did you mean by that? A. I meant exactly what I said.

Q. Wasn't there an insinuation in that? Wasn't there a veiled statement in that? A. The only veiled statement that there is in that portion of the letter is that we would not be a party to a private deal with the Interborough Rapid Transit Company for a division of territory when we were negotiating with the City for an entirely different proposition.

Q. What proposition were you negotiaing with the City? A. Well, it is quite a long proposition.

Q. Give it to us by date. A. March 2nd, 1911, we submitted a proposition to the City that was addressed, as I recall it, to the chairman of the Public Service Commission, Mr. Willcox, and Mr. Gaynor and Mr. McAneny, as chairman of the Board of Estimate. That led to conferences with the City authorities and also a later proposition, the date of which I think was April 21st or 22nd of the same year.

Q. What did you mean by that phrase "at the same time be negotiating privately for the adoption of a lesser and more selfish plan"? A. That was the plan that Mr. Martin brought over to me.

Q. Why did you call it a lesser or more selfish plan? A. As I remember the plan failed to give anything like the facilities for transportation which were embodied in our plan which had been submitted to the City.

Q. Well, what about the word selfish? What does that mean? A. It might have been more advantageous to us financially than the other plan. I assume that that is what I had in mind.

Q. I think that is all at the present time, Mr. Williams.

THEODORE P. SHONTS, being recalled, testified as follows:

Examination by Mr. Moss:

Q. Mr. Shonts, after seeing the Mayor down at St. James, when did you see him next? A. I don't remember. I didn't see him very often. The next I recall was the visit from two representatives of Mr. Gaynor, Mr. Kingsley Martin and Mr. Ingersoll. I don't remember of having seen the Mayor except on two or three occasions after that.

Q. Now, tell me about the first conversation you had with Mr. Martin. A. Well, Mr. Martin and Mr. Ingersoll came to my office together, as I recall it. They said they had been sent by the Mayor, in response to my suggestion that he select some engineer or engineers in whom I had confidence and he had confidence, and I told them I was glad they had come. And my recollection is that I immediately got in touch with our engineering department and opened our books to them and saw that they got good treatment, so that they could familiarize themselves with our records and supporting papers.

Q. You had conversations with Mr. Martin; what were they? A. He would come, he and Mr. Ingersoll, from time to time and ask various questions and I would answer them the best I could. As I testified here, I never saw their report. I could only judge of their minds by the questions they asked.

Q. How did you come to make the informal proposition which was produced in evidence this morning, an unsigned memorandum by you? A. My recollection of that, of course I have not been in my office and hadn't seen the document such as you referred to this morning. My recollection is that early in 1909, I would think March, 1909 — I think I have already testified to this — realizing that as a tenant of the City subway and realizing that something should be done to relieve the congestion which was already then apparent —

Chairman Thompson.— Well, just give us a direct answer to that, will you please, Mr. Shonts? A. (Continuing) Answering your question why I made this memorandum: without any financial backing we did make a proposition, I think in March, 1909, to build two tracks down the lower west side and two tracks up

the upper east side of Manhattan. We submitted that to the Public Service Commission. That proposition was rejected. Later on in that year, I think in June. Now between the time of the first offer, which I think was in March, and the second offer, which I think was in June, I had become acquainted with Messrs. J. P. Morgan & Company, and induced them to agree to back us in case we got certain other propositions from the City which we felt justified in making. The second proposition which we made I think was for four tracks on the upper side of Manhattan, and this was also with private capital, and that was rejected. Then I think along in the fall — and I thought it was handled rather brusquely —

Q. By whom? A. The Public Service Commission — that fall, September or October, I got either a note or a telephone from Chairman Willcox that he wanted to see me again, and so we started in on the third period of negotiations. This time I said to the railroad, "I don't want anything more sent up and thrown out. I would like to have it O.K.'d so as to know beforehand that if we make another offer to them we will not receive the same treatment." This is my recollection without having refreshed my mind in regard to this offer.

And that unsigned proposition of March, 1910, and put in a letter form, but not a formal offer, is what I understood to be the mind of the Public Service Commission as to what would be satisfactory to them if we made that offer, and I went up there with the idea of having them indicate —

Q. That is the paper you hold in your hand (handing paper)? A. Yes.

Q. Did you prepare that? A. It was prepared under my supervision and in my office, yes.

Q. Who helped you prepare it? A. Well, we have a staff.

Q. In preparing that did you have any conferences with members of the Public Service Commission, or anyone representing the Public Service Commission? A. Oh. yes; generally Chairman Willcox.

Q. Where did you have your conferences with Mr. Willcox? A. Mostly at the office, occasionally at his house. I lived at the Plaza.

Q. How often did you go there? A. I couldn't tell you.

Q. About how many times? A. Several times.

Q. Well, how many times, twenty? A. It was through a period of several months.

Q. Was it twenty times? A. Well, yes, say twenty. I don't know the exact number.

Q. During these twenty interviews or some of them did you have that paper present with you? A. Oh, no.

Q. There are on that paper pencil notations made by Mr. Willcox. When were they put on? A. I don't know. I have never seen it since.

Q. Were these pencil notations on it when it left your office? A. No.

Q. Was that intended to be a statement of what the railroad would do? A. No. That was intended to be a statement of what I understood from Chairman Willcox the Public Service Commission would accept in case we made such an offer.

Q. Wasn't that intended to be a statement of what your Company was willing to do? A. No, not necessarily.

Q. Well, just look this letter over, Mr. Shonts. (Counsel exhibits letter to witness.) Isn't that a proposal of what the Railroad Company was ready to do? A. No, not necessarily.

Q. You say not necessarily. I don't care about that. Was it or was it not? I think you should answer my question. A. I am answering you.

Q. Can't you say yes or no? A. No, because I haven't taken it up with our people. The object, as I recall it now and unless something happens to change my mind, the main purpose of the preparation of that document was to submit it to Mr. Willcox and have him intimate whether if we made an offer along those lines it would be acceptable by the Public Service Commission, and not be thrown down as previously.

Q. This provides for the Company financing the work? A. As I recall it it was private capital.

Q. How did you dare suggest to the Public Service Commission that you would do such a thing as that if you didn't know the Company would do it? A. I didn't. That is the reason why I say not necessarily.

Q. Now just look this paper over again, Mr. Shonts; isn't that a proposition? A. It was a proposition if he would have accepted it; that is, if the Public Service Commission would accept it I would have then asked our people for authority to carry it through.

Q. You believe you could have done it? A. Yes, sir.

Q. This was what they were willing to do? A. I think I could have put it through.

Q. And this was the result of your knowledge of your people and your many conferences with them on many occasions? A. Yes.

Q. You were not talking through your hat? A. I was trying not to.

Q. You were putting out what you believe your Company would stand for? All you wanted was a reasonable assurance that you were not going to be humuliated by having it thrown in the waste-basket as two others were? A. Yes.

Q. What was the result of this thing? A. Nothing ever came of it. I will add that I got a lot of information this morning that I never knew before.

Q. When you called upon the Mayor at St. Jamese about April 22nd, 1910, you knew this thing was in Mr. Wilcox's hands, didn't you? A. Oh, yes.

Q. Did you tell the Mayor you had made this proposition? A. I imagine so.

Q. You might have done so? A. I think I did.

Q. You told the Mayor you had made a proposition for doing this work at your own expense? A. I have no recollection. My natural recollection is, to be perfectly frank about this matter, and if I talked about it I told him. The best record, Mr. Counsel, that I can give as to what happened there was my personal and private memorandum dictated the next day, and which of course I never supposed would see the light of day. That is in the record. I make this point, Mr. Counsel, just to clear that up, inasmuch as I thought it was a fair point to make and it was my own statement of myself as to what I had said and of which even the Mayor had never seen a copy.

Q. Now this offer that you had of September 22nd, 1909. That offer was approved by your people, wasn't it? A. Oh, yes. I think that was our offer, but I think it was in June, 1909.

Q. And what was offered in the offer of 1909 in regards to the use of capital, was it to be the Company's capital? A. Yes. The first offer was private capital. If it had been accepted I don't know where we would have got the money.

Q. And that provided for four tracks at Madison Avenue? A. Yes.

Q. Four down the west side, that is what you called it, didn't you? A. Yes.

Q. And that would have been a five-cent fare, would it not? A. Yes.

Q. So when you went to St. James the Mayor knew by what had happened before and by what you had probably communicated to him that your company's proposal was to do a large work of that kind and finance it yourselves? A. They must have known. There is only one thing that I want to be perfectly frank about. I don't want to be misunderstood. Our two plans of 1909 had been previously rejected and this proposition we had not heard from, so I don't remember for that reason whether I had mentioned this or not.

Q. Now we come to your offer of July, 1910. That did not provide for your own financing of the proposition completely, but called for city money as well as private capital, didn't it? A. Yes, that is my recollection. My recollection was refreshed by the reading of that comparison by Mr. Whitney this morning.

Q. Did you talk with the Mayor about that change? A. I don't think I ever talked with the Mayor in regard to these matters after these two engineers came into the situation.

Q. Did you talk with Mr. Martin about it? A. Yes, frequently.

Q. Mr. Martin, you understood, represented the Mayor? A. I understood that Mr. Martin and Mr. Ingersoll represented the Mayor.

Q. Did you understand from Mr. Martin and Mr. Ingersoll or either of them that the Mayor would be agreeable to the use of public capital and private capital? A. I imagine I did. I have no clear recollection.

Q. When the Mayor spoke publicly about your proposition of July, 1910, didn't he condemn it? A. I don't remember about

that. I remember that the Mayor spoke publicly about it later on.

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Q. What was that understanding? A. I really couldn't say.

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Q. I didn't ask you to say how the vote stood, Mr. Shonts. Now, Mr. Shonts, you were very careful with that paper there to make it informal so as not to run any risk. Why didn't you make it formal? A. It was a memorandum. That is all that is.

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Q. Pardon me, Mr. Shonts, what members of the Public Service Commission or what representations did you make to that Commission between March, 1910 and July, 1910? A. Why, I kept up my usual relations with the chairman of the Commission.

Q. Did Mr. Wilcox see you? A. Oh, yes.

Q. Was he the only one? A. I don't know about that.

Q. Is he the only one you remember? A. Yes.

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Q. Well, you got a bonus for doing what was a good thing for the Company? A. They voted me some extra compensation.

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Q. Who is the gentleman that can tell the story? A. Mr. Martin and Mr. Ingersoll.

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Q. What was done with that offer? A. That offer was tentatively accepted by the Public Service Commission and it was sent over to the Board of Estimate and Apportionment with a note by Chairman Wilcox that the Public Service Commission, subject to certain modifications were prepared to accept that offer. As a result of that action a committee was appointed of which Mr. McAneny was made chairman by the Board of Estimate and Apportionment, to represent that body in joint investigation of the subject with the Public Service Commission. That resulted in the practical reopening of the entire question.

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Q. Didn't you in your plan provide against the possible opposition from Mr. McAneny? A. No.

Q. For whatever reason that might exist? A. No.

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Q. There was a time when the Brooklyn Rapid Transit Company people seemed to have it all? A. Yes.

Q. How was that expressed, by what legal action? A. Something the Public Service Commission did.

Q. What did they do? A. As I recall it, they proposed to award the contract, and apparently did award the contract, that was in July, 1911.

Q. You say that was in July, 1911? A. I think it was.

Mr. Quackenbush.— If you want to be accurate, I will state that on the 27th of June, 1911, the Interborough Rapid Transit Company withdrew its offer and subsequently the City authorities proposed to vote to the Brooklyn Rapid Transit Company the whole scheme. The matter rested until about the 19th of July, 1911, when it was proposed to take the matter up again, and then it was at that time there was a letter from Mayor Gaynor, of which you have spoken, and a change in the vote of Comptroller Prendergast. That is my recollection.

Q. On June 27th the Interborough Rapid Transit Company withdrew from the field. That left the whole thing open to the Brooklyn Rapid Transit Company. Isn't that the time when Mr.

Gaynor and Mr. Prendergast voted with the Brooklyn Rapid Transit Company without any warning? A. I don't know.

Q. I would like to know what conferences you had with the Mayor at or about that period? A. None that I remember of.

Q. Or with Mr. Martin or Mr. Ingersoll. A. None that I remember of.

Q. Did you discuss this afterwards with Mr. Freedman? A. No more than anybody else.

Q. Were you in conference with any persons as to the steps that should be taken to protect the interests of your Company? A. I only had conferences with the Board of Directors of the Interborough. I kept them fully advised at all times.

Q. What did you do to protect your interests? A. What particular time are you speaking of now?

Q. At the time these conferences were begun. A. We reached an agreement on July 19th.

Q. Who did? A. The Interborough Rapid Transit Company. Its financial backers saw that nothing would be done that they would not stand for from the money point of view. It was at the Metropolitan Club, and our minds seem to have met, and they shook hands and said the transaction was closed. It was either that day or the next day that Mr. Prendergast, after leaving that meeting, expressing himself as satisfied with the results, changed his mind and announced publicly that he would not be a party to it, and it was then that the Mayor issued this letter.

Q. The Mayor aligned himself with Mr. Prendergast? A. Yes.

Q. Did you recognize then in Mr. Gaynor and Mr. Prendergast elements which were jeopardizing the understanding that you had reached? A. Certainly, but I would not say jeopardize.

Q. They were explointing an agreement which they had entered into? A. Yes.

Q. To your mind was any sufficient reason given for doing that? A. I never knew. I don't know.

Q. Did you look upon the Mayor and Mr. Prendergast as the important points in this trouble? A. No.

Adjourned until March 17th at 11 A. M.

MARCH 17, 1916

MR. WESLEY WAIT: (Residence, Newburg, New York; representing himself) I will read this. It is very important, because it is the correspondence between the President of the United States and myself, between the Governor, the United States Attorney-General, and the State Attorney-General, so I wish to be reported accurately.

My appearance before this Committee is twofold: First, as a taxpayer of the city; second, as a defender of the Federal Constitution. My patriotism is natural and inherent. On my maternal side are the Molds, that gave of life and property. In 1780, Congress made a requisition upon the several States for the necessary funds to co-operate with the French land and naval forces. In this State, out of two hundred and eighty-four subscribers, four of my family gave largely in money and all in service. They served not only in the Revolution, but in the Indian Wars.

On my paternal side, the Waits are known for their patriotic spirit. The Downings are my relatives, and my marriage associations are with the Rawlings, one of whom was in Washington's bodyguard. General John A. Rawlings, General Grant's chief-of-staff, was my father-in-law.

Can you doubt my sincerity of patriotism? When I see such infractions of the basic laws of our land, dishonest men squandering the hard-earned property of my fellow-citizens, that which the Constitution of our government specifically directs to be supervised by law, I cannot be still. Your investigation certainly demonstrates the chaotic condition within this State, and the neglect of those officials sworn to protect the Federal and State Constitution.

The Federal Constitution says, in Act III, section II, paragraph I: "The judicial powers shall extend to all cases in law and equity arising under this constitution and between the State or the citizens thereof."

This is why I addressed a letter to the President of the United States, which I shall read immediately.

Article IV, section I, paragraph I, of the Federal Constitution: "Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State." Can any other State give faith and credit to the acts that this investigation by its disclosures, producing a precedent beyond all conception of dishonesty, and remain unrecognized by the Federal and State Attorney-Generals?

Article IV, Section XI, paragraph IV, Federal Constitution: "The United States shall guarantee against domestic violence." The sword is not the only instrument that destroys life, happiness and liberty. Ten times is death preferable to the humiliation and starvation of its people by dishonest acts of public and private corporations, sanctioned by public officials, contrary to this paragraph of the Constitution.

"Newburg, New York, *February* 19, 1916.

"The Hon. Woodrow Wilson, President of the United States, Washington, D. C.

"My dear Mr. President: The letter, of which the enclosed is a copy, has been forwarded to the Governor of the State of New York, and I ask that you call the attention of the Department of Justice to the infraction of the law.

"Yours very faithfully,

"WESLEY WAIT."

"Newburg, New York, *February*, 19, 1916.

"The Hon. Charles S. Whitman, Governor of the State of New York, Albany, New York.

"My dear Governor: While in New York City last Tuesday, the 16th, I called on Senator Thompson, now investigating certain acts in reference to the Interborough Railroad of the City of New York. My call was to express my opinion that the contracts between the City of New York and the dual system of the subway, the Interborough and Brooklyn Rapid Transit Company, are contrary to the Constitution of the United States, if not also to the Constitution of the State of New York.

"The diversion of public moneys to and in control of private corporations is to my mind illegal. Public moneys

raised by taxation without public representation is against the fundamental principles of our Government, and was the cause of the rupture with our mother country. Public moneys are raised for a specific purpose, and each allotment is for a specific purpose and cannot be diverted; otherwise, if so, all becomes void and illegal. Those officials so diverting the funds are responsible to the State.

"Article V of an Amendment of our Federal Constitution reads that 'No citizen shall be deprived of life, liberty or property without due process of law, nor shall any private property be taken for public use without just compensation. No State shall make or enforce any law which shall abridge the privileges of the citizens of the United States, nor shall any State deprive any person of life, liberty or property without the due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. The powers not delegated to the United States by the Constitution nor prohibited by it to the States, are reserved to the State respectively as to the people.'

"You will note that the Federal Government is strictly specific in its regard to the property, as it is to life or liberty. The three are essential to the enjoyment of any one, and any one taken away destroys all.

"The affairs of the subway construction, to my mind, is the entering of wedges to the destruction of our republic, and any true citizen that is capable of judging will apperciate the fact. This is the most outrageous insult to the American people ever attempted in America. The men connected with this imposition should be ostracised from American recognition. It is more gross than the injustice of the old Roman dynasty. The people of this State will look to you for the enforcement of the law, and that public moneys so diverted be restored to their proper place, and that such scandalous acts do not continue longer in the use of public money.

"Yours very faithfully,

"WESLEY WAIT."

Q. And what was offered in the offer of 1909 in regards to the use of capital, was it to be the Company's capital? A. Yes. The first offer was private capital. If it had been accepted I don't know where we would have got the money.

Q. And that provided for four tracks at Madison Avenue? A. Yes.

Q. Four down the west side, that is what you called it, didn't you? A. Yes.

Q. And that would have been a five-cent fare, would it not? A. Yes.

Q. So when you went to St. James the Mayor knew by what had happened before and by what you had probably communicated to him that your company's proposal was to do a large work of that kind and finance it yourselves? A. They must have known. There is only one thing that I want to be perfectly frank about. I don't want to be misunderstood. Our two plans of 1909 had been previously rejected and this proposition we had not heard from, so I don't remember for that reason whether I had mentioned this or not.

Q. Now we come to your offer of July, 1910. That did not provide for your own financing of the proposition completely, but called for city money as well as private capital, didn't it? A. Yes, that is my recollection. My recollection was refreshed by the reading of that comparison by Mr. Whitney this morning.

Q. Did you talk with the Mayor about that change? A. I don't think I ever talked with the Mayor in regard to these matters after these two engineers came into the situation.

Q. Did you talk with Mr. Martin about it? A. Yes, frequently.

Q. Mr. Martin, you understood, represented the Mayor? A. I understood that Mr. Martin and Mr. Ingersoll represented the Mayor.

Q. Did you understand from Mr. Martin and Mr. Ingersoll or either of them that the Mayor would be agreeable to the use of public capital and private capital? A. I imagine I did. I have no clear recollection.

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"The dual subway system is an enterprise entirely independent of the State, except as it comes in conflict with the Public Service Commission, and in the same position as various other railroads of the State. To allow them to use State funds is public capital going into partnership with private. To my mind, anything of this kind is entirely unconstitutional. It is important that the federal government investigate sincerely where infraction of the law is apparent, as shown in the recent investigation in New York City of this matter.

"The abuse of public funds has long been he source of the evil of governments and the fall of many. If a precedent is established in this case, the abuse will follow. My protest is in the interest of good government, and I have no personal interest in the matter. To expect the support of the citizens of this nation in time of stress, we must protect their interest in the time of peace." (Applause.)

Senator Thompson.— We are very glad to have that information, Mr. Wait. I want to say this to subsequent speakers, that this hearing is given for an opportunity to the people to express themselves on the matter of proposed legislation to be recommended by this Committee to the Legislature. The principal subject is the question of turning over what now is operated under the administration of the State; to wit, the Public Service Commission, in the construction of the subway system here, under what is known as the dual subway contract.

Now, those dual subways are in process of construction under the administration of the Public Service Commission appointed by the State. The city pays the money and the cost of the Commission. The question occurs as to whether we ought to now have legislation to have this subway construction turned over to the city government, either the Board of Estimate and Apportionment, the Borough Presidents; or a Committee, or a Board, or a Commission, under the jurisdiction of the City, to be appointed by the Mayor or the Board of Estimate, or to be confirmed by the Board of Aldermen or the like. That is the principal subject to be discussed.

The next proposition is the city being in partnership, so called, with various railroad companies here. Should there be legislation giving the city representation in the operation of the railroads? We will also take up for consideration the question of bringing water companies under the jurisdiction of the Public Service Commission, and possibly the question will be considered by the Committee as to whether ferries ought to be subject to the jurisdiction of the Public Service Commission.

If these dual subway contracts shall be legislated and turned over to the city for construction in the future, then it will be considered whether the first district ought to be enlarged by taking in the remainder of Long Island or additional territory. If the first district continued to build subways, then under the Constitution, there arises difficulities in enlarging the district boundary. It probably couldn't be done, but if that were taken away and the first district was simply a regulatory and a supervisory body, it would not be impossible to enlarge the district if it was thought wise.

I recognize Mr. Cornelius M. Sheenhan, of the Allied Boards of Trade.

Mr. Sheehan.— I think the proper legislation for this Committee to advise is the abolition of this Commission, for it is an absolute fact that transit conditions have become immeasurably worse under the Commission than they were before. For illustration, we were able to have in Brooklyn two hundred and twenty-seven car miles per thousand passengers operated without any commission. Today they are only operating one hundred and seventy-two under this Commission.

For the seven years preceding the Commission, the B. R. T. put on, without any Commission to force them, seven hundred sixty-four new cars, and in the eight years of the Public Service Commission, they put on one hundred and one new cars, and withdrew one hundred thirty-three, so that, as a matter of fact, we have ninety-two fewer elevated cars in Brooklyn today and sixty more surface cars, or a reduction of thirty-two cars in Brooklyn in eight years under the Public Service Commission.

It has been an expense. They have stood between the corporations and the public and have served the corporations rather than

the people. But, if the Commission is to be continued, it ought to be elected, and we would not have as we have today on the Commission, one man living in Baldwin, even though he has an official voting residence in Brooklyn; one man who was the consulting engineer of both the Interborough and the B. R. T.; a representative from Nebraska, only here two years; and an old man, seventy-eight years old, who never interested himself or never knew anything about the transit situation. That is your Public Service Commission. (Applause.)

The next proposition which should be taken up is that that Public Service Commission should be subject to the recall. (Applause.) That is, whenever twenty per cent. of the City of New York sign a petition requesting a submission to the people whether or not their public servants are performing public duties in the way the public want, it should and must be submitted to the people for their approval.

Senator Thompson.— We have recalled quite a lot of them, you know.

Mr. Sheehan.— But, we prefer the pleasure, Mr. Chairman, of doing that ourselves.

The next is that the Wagner Law should be repealed, the law that made this thing possible, and there should be substituted a law requiring that the minimum rental exacted by the city for any subway would be interest and sinking fund paid by the city, and at least a two per cent. profit upon the city's investment.

Next, there should be a yearly limit on the amount of money spent by the city in subways. We are up against this difficulty today because the city waited so long to stop a three hundred and twenty-five thousand dollar proposition that they were able to plead the excuse that the city had not that amount of money at the time, which was false, but it had a seeming probability. Now, if the city spent each year five, ten or fifteen million, and everybody knew it was that much and it was put into the budget, we could not accumulate all this amount of money at one time, and we would not have had a condition the same as we have, namely a Public Service Commission take office on the 1st of July, 1907, and do absolutely nothing until March, 1913, and then let a con-

tract clearly in violation of the Constitution of the State of New York.

The constitution prohibits the city from loaning its credit or its cash to any private individual or corporation. I believe this Committee ought to recommend to the city government that they immediately proceed to annul this contract on the ground that it is in violation of the constitution, and that the decision of the Court of Appeals was secured by deceiving the court through a collusive suit brought and paid for by the railroad companies in order to secure this immense advantage.

Next is that the Commission should be compelled to notify both the complainant and the Company simultaneously and use all of the beginning of any hearing on the complaint of the citizens, and that no case be re-opened without both sides being notified and being heard as to the question of reopening. I might say, in reference to the former, that the companies have notification of the giving of these hearings long before the complainant has notice. The complainant never knows until he goes there at that hearing who is the lawyer that is supposed to take care of his interests, paid for by the public. I will say that in two different instances where Mr. Backus, the man who made an exhibition of himself here the other day, was the attorney representing the Public Service Commission, he re-opened a case on the question of the stairways on Gates Avenue after the decision was made in favor of the complainants and set back the time. This was done by Commissioner Bassettt, who resorted to the contemptible trick of ordering the stenographer not to note the appearance of myself and another person as representing the complainants, so that Secretary Whitney would notify us, when we complained, that we had not represented the case. It was put back and held back — this was in 1908 — because the Commission at that time knew that they were going to take in the third tracking over in Brooklyn. So, you can understand that this dual subway contract with the third tracking proposition began all the way back in 1908. I say without any hesitancy that Commissioner Bassett knew what he was doing when he made the decision.

The next point is that the notices that are sent out by the Public Service Commission for these various hearings are generally

mailed on Saturday and received by those who are fortunate enough to get the calendars Monday morning in the first mail, sometime between eight and ten o'clock. In a very important case, for instance, the consolidation of the Coney Island and Brooklyn Railroad with the B. R. T. system, the notice was mailed Saturday afternoon, reached my house at ten o'clock Monday morning, and the hearing took place at ten-thirty in 154 Nassau Street. Now if I had not had the information ahead, I could not have been over there.

They held a two hour and a half hearing that day, and put it over until Thursday of the same week. Commissioner Williams, the ex-employe-attorney of the B. R. T., was the presiding commissioner in the case, and he was trying to get the civic organizations to go upstairs while he announced the adjournment of the case to the next Thursday. They intended to put over that deal in that manner.

The regulation of these things should be entirely different. There should be a system whereby the public could understand what is going on in the Public Service Commission. For illustration, we have today what is known as the formal and informal files in the Commission. The informal files are the complaints of the citizens, the communication with the companies, and if there be no formal hearing, all this matter remains in informal files. If there be a hearing, the formal files begin only with the minutes of that hearing, so that all that takes place between the time that the citizen notifies the complaints to the Commission and the setting of the hearing, becomes informal files, and by order of Secretary Whitney, now rewarded for his faithfulness to be a commissioner, access by the public has been denied to those files. So, if you are preparing your case to argue it before the Commission, you can not get at the communications between the Public Service Commission and the railroad, to know what has taken place and what communications, if any, have been received.

In a number of cases, we believe that there are no communications, except it be those over the private wires of the Commissioners with the companies themselves. We have good reason to believe that not only was Commissioner Wood's telephone used to

conduct conversations, but that other commissioners used the telephone constantly in communication with the railroad company.

The people have absolutely lost faith in that Public Service Commission. When their ex-attorney was forced off for fear he would have to face the issue of the company putting up $30,000 to put him on that Commission — and that is why he resigned — and when the railroad compaines are able to substitute in his place their consulting engineer, then the public are entitled to distrust the appointing power and the Commission itself.

Now those are the difficulties we have. First, we ask to abolish the Commission. There is no reason in the world why the City of New York should spend its money to provide railroad accommodations in order that the railroad companies will make the profit out of it and the people will get no relief. In the good old boodle-aldermen days, they bribed the aldermen for a franchise, but the railroads did at least lay the tracks, did supply the equipment and did pay taxes, no matter how small the taxes were. But we have changed it now. We don't go to the Board of Aldermen any more. We go to a more respectable body, and that body gives the railroad company not only the streets to use, but creates new streets for them, at enormous expense, to put these subways in, lays the rails for the company, and gives them their credit for every dollar that the railroads to-day are alleged to put in, or borrowed on the credit of the City of New York.

The hundred-page mortgage filed by the B. R. T. with the recorder in Brooklyn founds their claim by mortgaging the streets of Brooklyn to raise one hundred million dollars, and this company that borrows this money, the Municipal Railway Company, a subsidiary created by them, turns over all its property to the New York Consolidated Railroad Company, so that if they fail to pay their bonds, none of the property owned by the B. R. T. is responsible for, or can be seized on in payment of any of the debts of the B. R. T. growing out of this.

So, if the company should fail to pay their interest and foreclosure proceedings would be taken, the successful bidder would get the streets, the franchise and the property of the City of New York. The City of New York has provided every dollar of this money, and in return it is not even going to get good service.

Now we believe, Mr. Chairman, that this Commission ought to be abolished, because it serves no useful purpose. But if we are going to continue it, touching our main subject of difference between the construction and equipment, we are unalterably opposed to placing regulation and the providing of new railroad accommodations in two distinct bodies, for this reason:

Let us assume that the people of Brooklyn went, as they have the right to go, to the regulatory body and complained of the transit conditions entering Brooklyn. The regulatory body could say, with some truth, that with the present number of entrances from Brooklyn into Manhattan, it is impossible to provide proper accommodations at rush hours. Then we go over to the body whom we charge with providing new accommodations, and that body would turn around and say, and say truthfully, that until the body that regulates it uses their present equipment up to their full capacity, they refuse to supply city money to build more.

So, we come to the old condition of having to go from one body to the other. Whatever body will have charge of this proposition, if we continue it, ought to be given both regulatory and construction powers. I believe that that power should be taken away from the State, and that that power should be placed in the City government, because the people of the City pay the cost. It is their interest and they have the right to have whatever they want. If they do it rightly, they benefit by it. If they do it wrongly, they suffer by it.

We should have the power right here in our own city, since we pay every cent of the cost of this Commission, with the exception of the salaries of the commissioners, if the Commission be continued; but I would most urgently suggest and recommend, as the only one solution of the question, that the City of New York not only build all the new subways, but that they operate them themselves, municipally, and that they take steps to acquire all the railroads now under private ownership as the only possible solution of this vexed question of transit in the City of New York. (Applause.)

Mr. E. W. MCGUIRE: (Representing the Franklin Board of Trade of Brooklyn; residence, 147 Lefferts place, Brooklyn)

Mr. Chairman and Gentlemen: As President of the Franklin Board of Trade, a pioneer organization in attempting to better our transit facilities here and particularly in Brooklyn, and as a member of the Committee of One Hundred that attempted to obtain better transit facilities in Brooklyn, I have had occasion during the past two or three years to find out something about transit conditions here, and we have been earnestly at work trying to improve them.

During that time, we have met at various public hearings and otherwise, the Public Service Commissioners. We have also met the officials of the City of New York; and I wish to say, first of all, that we have found the Public Service Commissioners an absolute hindrance to the cause of transit. I agree absolutely with the previous speaker in regard to those conditions. If they had been paid officials of those companies — the transit companies — they could not have been more partisan or more injurious to the cause. You can draw your own conclusions as to why; you have just as good reason to find out as I have. I am simply telling you the facts. That is what we have found.

Furthermore, I wish to say that my opinion has not been favorable to the officials. Wherever the cause of transit is concerned in New York, public officials seem to regard anyone asking for better conditions with a good deal of suspicion. They don't regard you with very much interest. They don't pay much attention to what you say. That has been my experience. They have that "tired feeling" whenever anyone talks to them, and the whole thing is not calculated to give a very good opinion to a person who wishes to improve transit conditions, and we have not found them helpful.

Therefore, I draw the conclusion that it would be no improvement whatsoever to give the power over transit conditions here to the public officials, and our Board of Trade and the citizens in our neighborhood would be decidedly against any such proposition. We cannot depend on our officials where the transit conditions and the transit people are concerned. I regret very much to say that, but in my opinion it is the truth.

Therefore, I am not prepared to say what laws should be enacted, but I can say this: That we wish no law enacted — our

Board of Trade and the people whom I represent and with whom I am acquainted — that takes into consideration the public officials as far as the transit problem is concerned here in the City of New York, and we will be against it every time. We say that because we have learned it by hard experience.

I have given considerable of my time to this question. We took it up, were the pioneers on this third track business, a most disgraceful and outrageous proceeding, taking an elevated through our principal street and ruining it, all for the purpose of some persons who wanted the almighty dollar and not because they were interested in Brooklyn.

The situation cannot be overstated here. The Chairman of this Committee saw the attitude of some of those officials on the stand, who were willing to defy the people of the State of New York, if you please, or any other thing. That is the attitude of the Commissioners against us — no interest taken, improper notices sent out, acting as though they were paid partisans for the transit companies almost invariably. I am not overstating this; at least, I don't think I am, and I think I will be borne out by the different gentlemen that have appeared with me.

As I say, the public officials at the hearings of the Board of Finance have taken no interest, practically. They may have had a great interest, but they didn't show it. Therefore, it is no use, in my opinion, to think that the public officials are going to step in and make things a great deal better here in the transit situation. I don't believe they are. I would a thousand times rather depend on Senator Thompson and his Committee for relief. The work of this Committee has been the one hope that we have had in three or four years since we have been at work on this, and I want to say a good word for Senator Thompson. (Applause.) I never saw him before. I have only seen him with this Committee, but I wish we had a few more like him. I admire the fight he put up against these men. I only wish he had succeeded. It is only right that he should have succeeded, and I can tell him that when he gets to the voters of Brooklyn sometime in the future, he will find that out.

Senator Thompson.— That hasn't anything to do with subways.

Mr. McGuire.— I don't care, I am going to state it now that I

am standing. I say that because I am interested and I believe that when a man does well, something should be said for him, and we should let him know that we think so. This isn't talking exactly to the subject, but there are one or two things that I am going to say, if you will permit me.

We have listened with a great deal of interest to this testimony. We are paying enormous taxes here in New York. My taxes have increased largely, as they all have here. In the first place, the assessed value of our homes is enormous, very much in excess of their real value, and the amounts have been increased right along. What are we getting for it? Improved transit facilities? No, we are not. You have heard the talk about the cars here. We are not getting improved facilities. Are we getting anything for this large increase? I doubt it very much. We may get a few things; but for the most part, the taxes are entirely in excess.

We have been shown here the hundreds of thousands of dollars that have been wasted for attorneyss' fees and various things that have been apparently charged up to the city. The citizens of Brooklyn propose to see that transcripts are taken and that every single attorney that has been engaged in any lawsuits in which collusion has been had, reports of that will go to the Bar Association, and we propose to see that those people are punished. (Applause.) And furthermore, we propose that the transcript of this testimony be taken to the district attorney, and wherever our money has been stolen, we propose that the people who have taken it shall suffer and go to the prisons, if necessary. We don't care whether they are worth one cent or a million dollars. We propose to see it done — at least I am going to do all I can to do it, and I shan't stop until I am sure that I can't do it. We are thoroughly in earnest here. We want this city governed well. We want people to treat other people's money as though it was their own. They don't seem to think that they can do it.

Senator Thompson. —That is what they have been doing, isn't it?

Mr. McGuire.— I don't mean personal money, I mean citizens' money. We are interested in this testimony, I say, and we propose to see, as far as we are able, that the proper parties are punished that ought to be. It is no pleasure to say this. It is no pleasure

to have to come before a meeting of this kind and say these things. It is not pleasurable at all, but on the other hand, it is not pleasurable to feel that the large number of the people of Brooklyn are being swindled and imposed upon by such people. We believe that the Public Service Commission has helped these transit companies to carry out this plan. (Applause.)

Senator Thompson.— What would you say to a plan of subway construction under the supervision of a commission of five men appointed by the mayor, one from each borough?

Mr. McGuire.— If I knew who the mayor was, I might be able to tell you. (Laughter and applause.)

Senator Thompson.— Of course, you get a vote on that.

Mr. McGuire.— I hardly know, Senator, what to say about that. My experience has been that those things don't work out well.

Senator Thompson.— Up state we have been pretty well given to understand that New York wants home rule.

Mr. McGuire.— Of course they want home rule. You can see the reason down here.

Senator Thompson.— If we could find some way to give it to you, and a way that would be satisfactory, that is what the Legislature would like to do, I am very sure.

Mr. McGuire.— We would like it, too, if we can get the right sort of a plan, but I don't know how it can be done. That would be something to be worked out, I think.

Mr. Thomas E. Smith.— (Representing the Forest Park Taxpayers' Association of Queens) I am here to express the opinion of the Forest Park Taxpayers' Association, which is a body of men, all owning littlte homes, in Queens County. They are interested in Mr. Thompson's suggestion for them to come here and state their suggestiohs in reference to this change in the Public Service Commission.

Our experience with the Public Service Commission has been about the same as that of the previous speaker, but I think a little worse. I will here recite the case of a gas hearing, which we got

up a petition for to ask the Public Service Commission to get eighty-cent gas for us through the Woodhaven section, Richmond Hill and Jamacia. I was appointed as a committee of one to go before the Public Service Commission to make these charges for us to get this eighty-cent gas.

I was referred to a gentleman by the name of Mr. Chamberlin. This was in December, 1914. I stated to him the fact that they were getting eighty-cent gas in East New York. He stated that I would have to get proof and evidence, and submit it to the Public Service Commission, to warrant us to have this eighty-cent gas. I asked him if this Public Service Commission office wasn't inaugurated for the benefit of the taxpayers just for such complaints, and hadn't they the ability and the money and the paraphernalia to get this evidence far better than us taxpayers, who had to go out and earn our livelihood and pay them such enormuos salaries — as I understood, fifteen thousand to the commissioners and the other assistants all the way from two thousand five hundred to twelve thousand. He asked me to wait a minute. Then he came back and asked me to get a petition up, stating our grievance as best we could, which I did.

We submitted it to him. We had a hearing on the matter before Commissioner Maltby. We had to employ our own lawyers, who were Mr. Wyatt and Mr. Jones, who happened to be members of our Association. I asked Mr. Chamberlin who would represent us. He says, "I will represent you." During the fourteen meetings we had there, the only work that Mr. Chamberlin did was to sit behind me, and I would turn around and say, "Well, what are you doing in this case?" He said, "There is nothing for me to do in it."

In these fourteen meetings, gentlemen, we submitted proofs there ample to show that the Brooklyn Union Gas was furnishing the gas and that they were only under the name of Woodhaven, Jamacia and Richmond Hill, which I thought was a criminal offense for any charter to be assigned, transferred or sold to another corporation. We proved it in all our evidence which was propounded, showing that they were employes of the Brooklyn Union Gas. We submitted our evidence on our own time, just as we are doing it here, not getting reimbursed for the same — doing it

gratuitously. We sat there these fourteen meetings, and there was a lot of evidence submitted there which you wouldn't believe the expert witnesses would put up, but being, as I am, a builder, I had statements made to show for it.

They stated that their upkeep to convey a two-inch pipe from the main of the street-line to the building or the curb-line was greater than the main itself. I asked the reason why. They stated that the improvements, such as sidewalks and curb, would have to be taken up, and that was the reason why the expense of that main running into the building was greater than the mains — the four and six-inch mains — in the main streets, as that section was all dirt roads.

I was put on the stand, and in the meantime, I had my bills. The question was asked of me by my attorney — that is, the attorney we employed for the Forest Park Taxpayers' Association — whether the company paid for the installation of that pipe from the building-line into the street-line. I said they did not, that the builder paid for the same at fifteten cents a foot; and I produced the bills from the company, proving what I had stated. I also stated that in all of the construction work of this line of pipe when it was tunneled, there was no taking up of improvements.

I am only submitting these facts, gentlemen, to show what we went through to prove we had a case. In the writing up of the briefs of the case, our own attorney had to do that also. If I can remember rightly, it was eighteen months ago that our case was submitted. They haven't rendered us a decision in the matter as yet.

Mr. Whitman removed Maltby when his time expired, and he was the only decent commissioner we ever went before in our experience of seven years with that worthy body of Public Service Commissioners. We wrote a letter over here to the newly appointed chairman, Oscar Strauss, in reference to getting a decision upon this case. His answer was that he had not heard the case and so could not render a decision, that it would have to be tried all over again. Think of that gentlemen! Here is a judiciary court, in a sense, with its briefs, and yet they

tell us that because the chairman hasn't heard the case, we would have to try it over.

This is one of the happenings to the Association in reference to making complaints to this body, drawing the enormous salaries they are drawing for the benefit of the public. Up to date, gentlemen, we have had no decision rendered in this matter. We have made complaints all along about the transit conditions in New York City, which all of you gentlemen know are the most unsystematic and demoralized of any city in the country. We don't need to bring these facts here.

If the Public Service Commission had the conditions of traveling that we have, instead of these enormous automobiles which they ride in — and they are not "flivvers," they are all high-grade, like the National and Packards and that grade of cars — we wouldn't have to make our complaints. They would see these conditions, and I don't see why the taxpayers should pay that body to go around in these splendid machines.

We have had lots of matters appertaining to transit, and we have appeared before this Col. Williams, President of the B. R. T. of Brooklyn. We have made our complaints before him, thinking it would be a proper method, that we would not go above his head and so that he would not get antagonistic, but he has always been a belligerent man, similar to the attitude he displayed here, and wherever he is.

Mr. Moss.— Did he ever call you a liar?

Mr. Smith.— He said, "To hell with the public! Let them walk." (Laughter.)

Gentlemen, this Public Service Commission is a joke. The only thing I can see that they ever accomplished is drawing their fat salaries, but not giving any compensation for the same. That office was inaugurated by Governor Hughes in 1907, and it would be a grand office if it was followed out according to what it was set down for, but believe me, gentlemen, it works directly opposite to what it was intended to.

Up to dat,, as the property-holders are the people most interested in reference to expenditures on this dual system, they will be the parties taxed, but on transit matters, it covers all the people.

So far as the office has gone, I have found it a high-cost, useless office; so, Mr. Chairman, through the consensus of opinion of five hundred members, all property-holders, they would move to abolish entirely the office of the Public Service Commission, and would approve of a suggestion you made there in reference to the borough presidents taking control, as that would be home autonomy and home rule. We wouldn't have to come over here in this congested city and climb the Terminal Building to make our complaints. We could make them in our own section, and I think our own borough president would be more cognizant of facts as they existed than would this body of Public Service Commissioners, coming from all different parts of the country. (Applause.)

MR. JOHN H. LEACH: (Residence, Woodhaven, Long Island; representing himself) John H. Leach, Woodhaven, general sufferer and fool for owning property in the City of New York today.

Mr. Chairman, first I want to compliment you upon the stand you took in Albany, opposed to the confirmation of Travis H. Whitney as Public Service Commissioner. (Applause.) The people of this city, comprising the five boroughs, will show at the next governmental election what they think of a man who has put over such a man as Travis H. Whitney for the Public Service Commission. (Applause.) If we had the right of recall today, immediately a petition would have been filed when his appointment was confirmed. He is either an incompetent or a knave; either one of the two, take it as you wish.

The contract drawings that are filed and approved by the Commission are studied by taxpayers and travelers on transit lines, but the joker in their supplement "B" drawings are never brought to the light. If they were brought to the light, you wouldn't have your solid girders on Fulton Street in Brooklyn today. We are now going to possibly suffer a like condition in the Borough of Queens on the only main artery we have from Brooklyn to Jamacia, and that is Jamacia Avenue. There is no street other than that going across that great Borough that can be used for transit facilities. We were informed that they were going to try to slip over a joker. Instead of having the stairways on the main street,

they were going to throw them up residential streets. We overheard that conversation in a car and immediately took steps to find out if it was true. After spending two days in the Public Service Commission offices on a hunt to find out where Supplemental "b" drawings were at last on the top floor under the skylight, we found out where the drawings were. We protested against their being even considered. In acknowledgment of a letter we wrote, we received the following:

> "In reply, I have to state that these plans were approved by the Commission on January 12, 1915, that is, the original contract drawings, and that no supplemental drawings for that section of the structure at the location named have even been submitted by the New York and Municipal Railway Corporation to this Commission. Yours very truly, Travis H. Whitney, Secretary."

I immediately called up Mr. Wright on the 'phone from my office and told him that they did not know what they were talking about or what they were writing about, or evidently had something to conceal, which brought this letter today, stating, in one of the paragraphs:

> "Proposed contract drawings and form of contract with such separate contract were received by the Commission from the New York and Municipal Railway Corporation on March 14, 1916 (four days ago)."

That is a bare-faced lie on the face of it. I saw those there two weeks ago, and the chances are they had them ten months ago.

Mr. Moss.— You saw them yourself?

Mr. Leach.— I saw them myself on the top floor under the skylights after they dug them out from an inner room. This is also signed by Whitney.

If these be the truth, then he is incompetent. If he is not incompetent, they are not true. That is what we are up against with this Public Corporation Service Commission.

Senator Thompson.— Will you present that all to the counsel?

Mr. Leach.— I certainly shall, sir; it will be a pleasure.

Where they propose to put a stairway is on a piece of property, a street, which was deeded by the Union Land and Development Company to the Commissioner of Parks of the City of Brooklyn to be maintained as an entrance to the park. If their able counsel or any of the Commission had investigated as they should have, they would have found that deed on record. At two o'clock, I will have a certified copy of that deed at my office. To put a stairway on a street is not maintaing it and retaining it as an entrance to the park.

The people I come in contact with, and I come in contact with them very closely through my connection as Chairman of the local school board and trustee of the Queens Borough Public Library and general civic worker, are of the opinion that this so-called Commission should be abolished and should be abolished immediately and that proceeding should be instituted to jail those who have stolen or given away our money. (Applause.) And, as the previous speaker has said, proceedings should also be instituted to do likewise to the lawyers that they employ who seem to see nothing else but the gold for their god and not for the advancement of their fellowmen. Mr. Chairman, we ask this, that the Commission be abolished, that the power be delegated to men who are the borough presidents of the various boroughs with one vote and one vote only for each (not two for a man from Manhattan and two from Brooklyn, but one from each section), and that on that Commission there should be no lawyer. (Applause.)

Adjournment.

AFTERNOON SESSION.

Meeting called to order at 2:45 P. M. by the Chairman.

Senator Thompson.— I have a letter from Misha Appelbaum in which he says he is not able to appear. He has in the letter some suggestions which he thinks can be worked out to advantage. This letter will be spread upon the record.

The Thompson Investigating Committee, Municipal Building, New York City.

"Gentlemen:

"I very much regret my inability to carry out my original intention to prevent some sugestions, but I find that previous engagements make it impossible.

"What I had principally in mind was that the city goverment should have the same power and privileges over the entire transit system as the Interstate Commerce Commission has over the Railroads.

"The transportation problem in New York City is a very serious one and it should be given much more intelligent study than heretofore. If the City enters into a partnership with the Interborough or any other transit company, it should be granted, and is in fact entitled to all the privileges of a partner to be shown exactly what is being paid out and planned and the City Commissioner of Accounts should be the one to O. K. such expenditures. The fares charged to the public; the number of trains to be run; the kind of cars to be furnished, etc., all of which should be under the supervision of a City official. It would be much better if an office was created so that responsibility could be lodged with some one in almost an identical manner as the Commissioner of Police or the Fire Department is responsible for their respective Departments. A Commissioner of Welfare, whether appointed or elected with an advisory board of nonpartisan citizens would not only have the opportunity to correct the present abuses, but to help the Transit Companies to study their problems and try to bring about reform which would make travel safer and more comfortable. This Department should also have the entire system inspected thoroughly in order to obviate the necessity of investigating calamities which occur peridoically.

"This certainly is a matter for the Municipality and should be taken entirely out of the hands of any commission that is appointed by State officials. The city should also have a perfect right to dictate to the Transit Companies as to how their employees should be treated, for it is next to impossible

to provide the public with safety if the employees are overworked, underfed and in addition forced to breathe foul air which in itself is not conducive to good health.

"If this City supervision is not granted, then I see absolutely no reason why the Municipality shall not operate and own all the Transit systems, lighting plants, etc., in which the public is so vitally interested, and whose interests have been so badly neglected.

"Sincerely yours,
(Signed) MISHA APPELBAUM."

Senator Thompson.— Is Miss Valva present?

Miss Valva.— Yes.

Senator Thompson.— I want to state on the records of this Committee that the Committee came to New York and were originally appointed in January, 1915. Before coming here, the question of a stenographer came up. Application was made by Mr. George Shotwell to take the minutes of this committee on the basis of daily copy, which means that the proceedings of the day before should be typewritten and put on the desks of the members of the committee the next morning at nine o'clock. Mr. Shotwell said that the Comptroller's office would allow up to twenty cents a folio for the first page, ten cents a folio for the second page and five cents a folio for each succeeding page. The committee needed fifteen pages of that record, fifteen copies. That would have meant ninety-five cents a folio for the fifteen copies. The committee refused to entertain that offer. Mr. Shotwell also desired the right to sell copies of the record to such people as desired them.

The Committee then asked for bids and received from stenographers a number of bids; the highest bid, I think, was forty-eight cent. It was then let for fifteen copies at thirty cents, and the reporting was done. The Committee passed a resolution that all minutes taken here were the property of the State of New York and the record in no wise the property of the stenographer who took the record. From that record last year, sales of the copies were permitted from which was received over five thousand dollars, which was paid into the State Treasury.

When the committee came back this summer, we brought with us one stenographer and he was paid five dollars a day when he first came. In September we had to have the services of another stenographer, whom we had to pay fifteen dollars a day. The first stenographer had left us and we were not able to use him. Then, we employed a stenographer for special service, who claims to have had an understanding that he pay all of his expenses and all the expenses of the getting out of the record for fifty dollars a day and for such days or half days as he worked, which amounted to probably the same thing as fifteen dollars a day.

These stenographers went to Miss Valva's office to have the record transcribed, for which she furnished bills from time to time, not having had any talk with me, but the stenographers who went there to get it out having stated that the bill would be reasonable and occasionally bills were sent to me. I forget the amount of them.

In February, we had two stenographers taking and sometimes we called on Miss Valva to come in here and take copies of the record. There was no agreement about it. She came here and whatever was reasonable, she is entitled to.

Not expecting there was to be any particular or unusual charge, she took testimony from January 31 to the 4th of March. She took testimony on twenty-three different days. It seems that she makes two charges; one for extending the records which amounts, from the 17th of September, 1915, up to and including the 4th of March, 1916, to some $1,104.85 for six months, which the Chairman of this committee regards as a reasonable charge and is ready to pay or approve.

For the twenty-three days for reporting alone, taking the testimony here on the table, she makes an additional charge, as I understand this bill, of $1,833, an average of a trifle short of eighty dollars a day. This bill I cannot approve because it is too high. Miss Valva, it must be remembered, only took a portion of the testimony of this committee and at no time during the sessions of this committee has there ever been daily copy furnished. By that I mean copy that was ready for use the next morning after adjournment, except some few special cases where a portion of the record was gotten out for the benefit of somebody.

If the question of the reasonableness of the bill can be arranged, I have offered to approve the portion of it in relation to extending the testimony, which has been refused and I have offered to pay Miss Valva a reasonable sum for her services here, but that has been refused and she makes the bill at sixty-five cents a folio which is designed to re-establish the rate which this committee refused to adopt last winter, of twenty cents a folio for the first page and ten for the second and five for each subsequent page; nine copies of this, for which she charges sixty-five cents puts it at that rate.

At that rate stenographers of the Committee of Investigation would have meant to this Committee the cost last winter alone of upwards of $20,000. It has been abused to the knowledge of the Chairman of this Committee and under no circumstances will the Chairman of this Committee take any course which will make a precedent to re-establish this rate in the Comptroller's office of the State.

An order has been made, for reasons well known to men who are investigating subjects of importance that come before this committee, to the effect that this record is a public record of this Committee belonging to this Committee, and a positive order has been issued to all the employees of this Committee, including stenographers, that this record shall not be allowed to be taken by people outside the Committee.

I am told this morning by a representative of one of the corporations here that Miss Valva has offered to sell a copy of these minutes to them. On account of the fact that the record has not been allowed to be used, it, of course, becomes of value to a great many people, and I assume that money could be made of it, but I doubt the ethics of any attache or employee of this Committee selling the knowledge that was obtained while in the employ of this Committee, and I think it is against public morals to allow that to be done. I do know that it would seriously hamper the investigation of this Committee and we cannot permit that to happen.

This record is the record of the State, and for that reason, I want to now state that if you want this bill approved, and make it out on the form required by the Comptroller for the $1,104.85

charged for extending the testimony plus a reasonable sum for the time of the stenographer, taking the testimony over the table, based on what a stenographer is paid for a like service. You can base it, if you like, on the salary of a Supreme Court stenographer, which is the highest paid service I know of, and I will approve that bill. I cannot approve it at this rate, because it cannot be re-established.

The Committee here make an order that the copies of the record in the hands of any person, who has been or is now employed by this Committee shall not be loaned or sold nor copied for use, and, so far as the nine copies are concerned, counsel is ordered to issue a subpoena duces tecum requiring Miss Valva to produce them to the Committee.

The Chairman will say that this Committee is authorized by the Committee to say that any use of this record other than that ordered by the Committee, we will have to, under the circumstances, regard as contempt and shall treat accordingly.

Miss Valva, the Committee authorizes me to order you to produce the copies of the record before this Committee here forthwith. That means at four o'clock, if that is a reasonable time; if not, tomorrow morning at eleven o'clock. You are ordered to produce and deliver to this Committee all copies of the record taken which are in your possession or have been in your possession since the time you have been doing work for this Committee.

Mr. Henry H. Klein.— With your permission, I will read part of what I have to say.

Government regulation of public utilities has failed largely because of the inherent weakness of human nature. Under the present system of private ownership of public utilities, the incentive is ever present for lax regulation. Effective regulation is somtimes nullified by the court as in the case of decisions by the Public Service Commission of this district. Under the Public Service Commission Act, the State pays the salaries of the Commissioners and the Secretary on the theory that the Commission will be relieved of the pressure of local influence. The theory is wrong because the same commercial and political influences are as potent in state as in city affairs.

The Public Service Commission should either be a local or a state body, not a part of each. Since the Public Service Commission of the first district has jurisdiction over public utilities in New York City and since virtually the entire cost of this Commission, about $3,600,000 a year, is borne by this City, the Public Service Commission should be under city control.

The work of the Public Service Commission is duplicated in part of the Franchise Bureau of the Board of Estimates and the Bureau of Gas and Electricity of the Water Department. These bureaus should be consolidated with similar bureaus in the Public Service Commission.

Many thousands of dollars could be saved annually in administravtive costs. The regulatory part of the Public Service Commission should be separated from the administrative and engineering and the number of commissioners should be reduced from five to three, one in charge of each branch of the work. Heads of bureaus should be delegated to hear and report on complaints to the Commission.

The City of New York is overcharged at least one million dollars a year by the lighting monopoly, the responsibility for which rests mainly on the Water Department through the Bureau of Gas and Electricity.

Most of the franchises on which the gas companies of this city operate have expired and are subject to readjustment by the city authorities.

The Consolidated Gas Company paid eighteen million dollars for forty-five million dollars of stock in the Edison Company of New York. The earning of gas and electric light companies owned and controlled by the Consolidated Gas Company have been excessive since the reduction of the gas rates from one dollar to eighty cents per thousand cubic feet, and from ten to eight cents per kilowatt hour.

The capital stock of the Consolidated Gas Company was increased ten million dallors out of surplus since the gas rate was reduced in 1909.

The franchise of the Consolidated Telegraph and Electrical Subway Company, on which the monopoly of the Edison Company in Manhattan and the Bronx is based, the exclusive use of the

subway conduits, is void because of fraud on the city. The city established a fraud of $3,200,000, going back only a few years, on which basis the total fraud extended over the full franchise period is many millions more.

Every dollar of physical value in gas and electric properties in the City of New York has been created out of surplus earnings over and above operating expenses, interests, dividends and depreciation.

The franchise on which the telephone monopoly is based, the exclusive right held by the Empire Subway Company to string low tension wires through the subway conduits, is also void for the same reason as proven in the case of the Consolidated Telegraph and Electric Subway Company, both of which privileges were granted as one franchise. The same statement is true in regard to the physical value of the telephone properties in this city, all created out of surplus earnings over and above operating expenses, interest, dividends and depreciation.

The earnings of the Interborough Company for the past fiscal year are reported at more than eight million dollars. This sum is net, after improper deductions are made. On eighteen milion dollars invested by the Interborough Company for subway equipment, this profit is more than forty-four per cent. On nine million dollars which was spent in the construction of the subway, this profit for the past fiscal year is more than eighty-eight per cent. The Rapid Transit Construction Company, formerly John B. McDonald, made a profit of approximately nine million dollars in the construction of the road. The Interborough Company was capitalized at thirty-five million dollars, the stock of which rose to over two hundred and fifty before it was converted into seventy million dollars of Inter-Met Bonds, with the consent of the Public Service Commission. Extra dividends the stockholders were paid out of excess earnings, subway profits being used to restore value to the stock of a defunct surface railway company. It was not contemplated by the city when it entered into the contract for operation with the Interborough Company that subway profits would be thus used.

The city receives less from the present subway than it now receives from a bootblack stand on public property or from a news-

stand situated within a private stoop-line. The city receives three dollars per year from each bootblack chair and five dollars per year from each news stand within a stoopline. The city will receive less from its investment in the new subway than it receives from the present subways. The investment in the new subway is being estimated at $155,000,000. The investment in the original subway was about fifty-six million dollars. John D. Rockefeller receives the largest individual share of profits out of public utilities in this city, his holdings in Consolidated Gas and Manhattan Elevated Railroad, with guaranteed earnings from the Interborough being virtually controlling.

The people of the City of New York pay approximately $170,000,000 per year for gas, electricity and power and transportation. They pay $30,000,000 a year for telephone service, making a total of $200,000,000 per year to public service corporations. This is forty dollars a year for every man, woman and child in the community.

The city should proceed to take or readjust the gas, electric light and telephone franchises and it should break the subway contracts as inequitable or fraudulent. The city was imposed upon when the first subway contract was signed and it was again imposed upon and its responsible officials overreached when its contracts for the operation of the new subway were entered into.

Mr. Chairman, the fate of the City of New York as I see it, hangs on the subway contracts. The city, admittedly, will receive nothing out of the new subway for at least ten years and probably a great many years more, probably during the life of the contract. The city will pay out, incident to that contract, within a few years, a total of seven million dollars for interest on bonds. The city will also have to meet during the next few years, in addition to these expenditures, one fifteenth each year of the $57,000,000 part of the $100,000,000 loan with interest on the cancelled part until it is all cancelled. It will have to spend at least $10,000,000 this year in the budget as half of the pay-as-you-go corporate expenditure for the year. It will have to pay the succeeding year $15,000,000 as three-quarters of the pay-as-you-go corporate expenditure. And the following year it will have to pay $20,000,000, all on the basis of $20,000,000 a year for the next

few years for a pay-as-you-go corporate stock expenditure. When compared with the average for the last ten years, that is about two-fifths of what the city has spent.

If there is no direct tax in the budget for next year, the total of the direct tax this year that the city had to pay will be more than exceeded by the additional expenditures the tax-payers will have to meet through these items that I have mentioned. There will be other sources of expenditure not comtemplated now but which will arise and must be provided for if the city is to meet its outlay.

Based on these calculations, the tax rate for the City of New York for the year 1920 will be at least two and fifty one hundredths, which, compared with what it is today, is about an average of thirty-five to forty points higher.

Property today is assessed more than its full value in a number of places, and the anticipated increases from subway expenditures due to the extension of the rapid transit lines have virtually been discounted. So, the city faces an overwhelming budget in a large measure due to its expenditures for the subway contracts.

Now, I have here the record of the United States Supreme Court in the case of William R. Wilcox et al. against the Consolidated Gas Company of New York. I said in my written address that most of the gas franchises were void, and I will read from the report of the joint committee of the Senate and Assembly of the State of New York, April, 1905, which is the Committee that sat when Charles E. Hughes was investigator. That report contains various statements with regard to franchises held by the gas companies. The reason I make this all plain is because to my mind the city must get revenues from other sources than it receives today, if it is to maintain its credit and prevent financial disaster to tax-payers in the future. On Page 78, I read this, in connection with the Consolidated Gas Company. (Reads.) (Also reads from Pages 79, 80, 85, 86, 87, 88, 93 and 96.)

There was a second one made by the city, through Comptroller Prendergast in the Spring or Summer of 1910, in which the claims of the city and the state against the gas companies represented by the Consolidated Gas Company were compromised with the claims of the Consolidated Gas Company against the city. The amount

paid was approximately ten million five hundred thousand dollars, the gas company's offset being fully ten million dollars, the city receiving about five hundred thousand dollars. The claim has been made that the city was greatly overcharged in the bills rendered by the company and the overcharges allowed in the settlement causing a loss to the city of anywhere from five hundred thousand to two million five hundred thousand. I might mention the fact that Mr. Hervey, lately confirmed as Public Service Commissioner, had a lot to do with the computing and allowing of the Company's claims against the city in that settlement.

Q. (By Mr. Moss) Who did he represent?

A. (By Mr. Klein) He represented the comptroller. The comptroller made the settlement.

(Mr. Klein continues to read from Pages 99, 100 and 101.)

That record reviews the history of all of the gas companies.

I have the report of the Public Service Commission for the year 1910, Volume I, which contains in the Appendix a report of the finances of electrical corporations in Greater New York. That report was prepared by the Public Service Commission, under the direction of Mr. Maltby, one of the Commissioners. His introduction is dated December 28, 1910. This report reviews the franchise history of the electrical companies and presents almost a similar state of facts to those contained in the report I just read.

For verification of the facts concerning the franchise of gas companies, I refer you to the report of the Bureau of Franchises of the Board of Estimate and Apportionment of the City of New York for 1914.

If the purpose of this investigation is to substitute a Commission for the present Public Service Commission that will undertake, or have as its main object a recovery of profits from public utilities in the City of New York, it will have accomplished something that must be performed before the fate of the city is decided through excessive taxation.

This Committee is probably aware that since 1907 real estate has been unsalable virtually. The records of the real estate auction rooms show that property is sold at from fifty to seventy-five per

cent. of its assessed value under the hammer, and that therefore the total assessed value of the City of New York real estate, exclusive of personal property, is excessive, and that if a fair assessed valuation is established throughout the city, the total will be less than that. The city will have to raise its tax rate to provide sufficient revenues to meet its budget, because some of the revenues of the city are diminishing.

In Queens, with the subways, Mr. Chairman, the city released from the debt limit every dollar it could find anywhere within its credit. It released the $56,000,000 of original subway bonds. It then released water bonds for the Catskill project, totaling about $165,000,000 or $180,000,000. It relaesed lastly dock bonds for subway purposes.

Mr. Moss.— What was the total of the dock bonds?

Mr. Klein.— $70,000,000, of which about $55,000,000 was used for subway purposes, the balance for the construction of the South Brooklyn Water Terminal. Prior to that release, the Mayor had instructed the tax commissioners to jack up real estate values in anticipation of subway contracts.

Mr. Moss.— What year?

Mr. Klien.— This was in 1910 when the first large addition of $700,000,000 or $800,000,000 of the assessed valuation was made.

Mr. Moss.— How much was added that year?

Mr. Klien.— Approximately ten per cent.

Mr. Moss.— How much was added the next year?

Mr. Klien.— The following year, 1911, about two hundred and fifty million dollars. There was about one hundred million dollars added for subway purposes. Prior to that, an adjudication had been made by the Court of Appeals, through Judge Tracy, finding the city's borrowing margin at more than a hundred million. With the additional one thousand million dollars in increased taxation, there were fully a hundred twenty million dollars added within a few years. On top of that, the city added $70,000,000 released from the dock bonds, of which $55,000,000 went for subway purposes.

It does seem as if the city had extended itself to the very last, that it has thrown away all judgment and discretion in over-extending itself. At that stage, when the contracts were finally signed, not only was the city over-extended on its borrowing and other budgetary expenditures, but also there was but a very slim margin in case of emergency. I believe testimony was produced here by the Comptroller's representative and others that the margin should be at least fifty million dollars. The margin at no time, since 1911 except for a short interval, was over twenty million dollars.

My notion of the task before this Committee is not only to clean out the Public Service Commission but to put into the office of the Public Service Commission men who will have for their purpose a recovery of a large part of the profits on public utilities in this city, since practically all of the physical value of the public utilities' property that exists today is due to excess earnings over normal operating expenses, interest, dividends and depreciation.

Mr. Moss.— You mean watered stock.

Mr. Klien.— But, I am referring to the physical values of the properties without regard to the stocks or bonds.

The biggest job that the city officials, including the Public Service Commissioners, have is to save New York from bankruptcy. Without question that is the task. The Public Service Commission is a state body. The city pays their salaries and it should therefore be a city commission, as I suggested. Of the $3,600,000, at least three-quarters is paid out of the city treasury. If I am not mistaken that comes out of public stock issued.

Assistant Counsel.— Do you understand that the Public Service Commission would have powers to recover from the city such franchises?

Mr. Klien.— I think they have the power to initiate such proceedings.

I want to say, Mr. Chairman, in connection with the situation as it stands, if changes are not made along these lines, the city might well claim the right to put a directorate, a member of the Public Service Commission and a member of the Board of Esti-

mate in each of the subway companies, both the Interborough and the New York Municipal Railway Corporation, so that direct reports can be made to the city affecting its own interests in these contracts, the interest of the city being greater than the interest of the corporations in both these companies.

Senator Thompson.— All we can do is to recommend legislation that will shape the conduct of the Commission.

Mr. Klien.— Then maybe the Commission can be abolished and the right kind of Commission appointed.

Assistant Counsel.— What is your idea about the transference of the rapid transit functions to a city board rather than a state board?

Mr. Klien.— I would leave the Commission as it is and I certainly would remove the control from the state and put it into the hands of the city, leaving it exactly as it is, a department of this city. I would consolidate the Bureaus of Gas and Electricity and have franchises now in the city with the same bureaus in the Public Service Commission. The records are duplicate and the work is duplicate.

Assistant Counsel.— I am rather confused in your statement. The Public Service Commission is a state board exercising regulatory functions as a state body, and municipal functions as a rapid transit city body. What would you say as to separating those functions, leaving the Public Service Commission simply the regulatory powers as it now has, and a new body, constituted entirely from the city, to have powers in rapid transit matters?

Mr. Klien.— My own notion is that the Public Service Commission should remain as it is. It hasn't been properly conducted in the interests of the city and those persons should be put there who will work in behalf of the city.

Mr. Moss.— Suppose such efforts fail?

Mr. Klien.— I would put it into the control of the city government. The State pays, under the law, I believe, $82,000 a year for the salary of the Commissioners and the Secretary —

Assistant Counsel.— Perhaps I didn't make myself clear. You understand that the present Public Service Commission of the First District is exercising both state functions and municipal functions. It has seemed well to the Committee to confine its discussions as to whether or not those city functions should not be taken from the Public Service Commission and placed with another commission that would be a city commission.

Mr. Klien.— I would put the entire Public Service Commission under the control of the city as a department of the city government.

Assistant Counsel.— As to regulation and everything else?

Mr. Klien —Yes.

Assistant Counsel.— Take it entirely out of the hands of the legislature of the state to investigate its acts?

Mr. Klien.— That doesn't remove the power of the legislature to investigate the derelictions of a public official. They still have that authority. Borough President Ahearn and others were removed by the Governor.

Senator Thompson.— Of course, this proposition of keeping the regulatory functions as they are and turning the other functions over to the city would save the city a lot of money. At the present time. At the present time, the state pays ninety-one thousand, which is not proportionate.

Mr. Klien.— Do you mean, Mr. Chairman, that $500,000 would be appropriated by the State to carry on the work of the Public Service Commission?

Senator Thompson.— It seems that the cost here of the Public Service Commission has been over $3,000,000 a year, about $500,000 of which has been the cost of salaries, etc. That isn't the exact amount, you know, but that is it approximately. At the present time the State only pays $91,000. It pays $75,000, the salaries of the Commissioners, $10,000 to the Chief Counsellor and $6,000 to the Secretary.

Mr. Klien.— I think, since the city pays indirectly seventy per

cent. of those $500,000, it might as well pay it all and be responsible for it.

MR. HENRY W. SPANG, (Office 132 Liberty Street): I want to speak as to the conduct of the electrical engineering of the Public Service Commission. About three weeks ago, I happened to come across Mr. Willcox at the outer door. You will recall that in the investigations of Commissioner Wood, he claimed that one of the reasons they gave this contract was that it controlled certain patents and exclusive rights on what is known as the selective signal of the alternating current. What Mr. Salmon had reference to was the recent decision made at Portland by the District Court of Maine. The decision was to this effect, that in 1875, while I was connected with the electric railroad, I devised this method, or, in other words, in 1875, I was just about thirty years ahead of the times.

Since 1890, I have been investigating grounding of electricity in Brooklyn. One of the first cases that came under my observation was the effect of the cable which runs from Manhattan Beach, extends along Ocean Avenue across the Brooklyn Bridge down Water Street to Broad and Wall. When they started up the care on this road from Prospect Park to Coney Island, which runs along Coney Island Avenue about half a mile away from Ocean Avenue, it affected the operation of the French Cable. I knew that it was due to the grounding action of the electric railway current. The following year, 1891, the armor of that cable was eaten away down at Maiden Lane and Water Street. At that section there is a swamp. The power station of that road is at Kings Highway.

Since the electrification of the railway in Brooklyn, I investigated every case of that kind, that is, the electrolysis effect upon the pipes adjacent to the waterways. Through that investigation, I was able to determine the grounding action of electricity. I might say this, that in 1875 on the Reading Railroad, I determined three important facts — that you could not employ a current of over one ampere in connection with the rails of an electric railway for signalling purposes; that the tendency of electricity was greater to flow in in a ground circuit than a metallic circuit.

In 1906, I prepared a printed pamphlet giving the two theories, showing the fallacy of the existing electric railway theory — it wasn't a pamphlet, either; it was a circular of four pages.

I have in my possession now three photographs given me by Mr. Westinghouse where for the second time a gas well eighteen hundred feet down was eaten away at that depth by the current of a trolley railway. That gas well was on the property of the Westinghouse Electric Manufacturing Company. It was located about a thousand feet away from the trolley railway and about two miles from the sub-power station.

When this present commission was formed, this Public Service Commission, one of the first persons I called on was Mr. Whitney. I gave him a copy of this circular. The next man I called on was Mr. McCann. One of the reasons I called on him was that I thought he was a very prominent man, and on account of the clear indication of the grounding of the electric railway current in Brooklyn I thought he would be interested in the subject. I went all over the matter with him. I not only went over this subject, but I gave him some copies of certain correspondence which I had with the officials of the New York Central Railroad in reference to their troubles, the breakdown of insulations which they had ten months after they installed their system between Forty-second Street and Spuyten Duyvil. I tried to impress him to this effect, that these men who are posing as consulting engineers don't know anything upon the subject. I gave him a copy, too of my third work on Lightning Protection in 1883, in which was given the opinion of Edicon and quite a number of prominent electricians. I hold here in my hand a letter from Thomas A. Edison. In 1877, I issued my first work on Lightning Protection. I sent a copy to Mr. Edison. A short time afterwards, we sent me this letter, together with an original letter from a man by the name of Stedman, who called to see him down at Menlo Park upon the condition of electric protection. This is the sum and substance of the letter to George Stedman: "I have referred your letter to Henry W. Spang, of Reading, Pa., who is the best authority on that subject in this country. He has written the work entitled, "A practical Treatise on Lightning Protection."

In the fall of 1900, the power station of Henry Ballard at Dobbs Ferry was destroyed by lightning. The following year, I was asked by his elder son to attend to the reconstruction of that property. While there, I made three important discoveries. I discovered the true relation of the atmospheric electricity with the electric charge of the earth. I made a discovery to this effect, that you can pitch the lightning at a point away from the building to be protected. Another important discovery I made was that these wires ever connected with a transformer, and after the third thunderstorm the wires were all disabled in the central portion of the building and had to be rewired.

I am referring to this phenomena for this purpose — a certain question has been brought up here about lighting the Hall of Records by means of Edison wiring. The Halls of Record in quite a number of instances have been wired to be operated by a dynamo of small capacity. When you change from supplying current of a dynamo of a small capacity to one of the capacity of the one on Duane Street, you will greatly increase the electric fire hazard.

There are in this city about four hundred large buildings in which the wiring is pronounced unsafe. What ought to be done in my estimation is this — the New York Edison Company ought to provide a system adapted for that kind of wiring. They shouldn't apply their present system to buildings like the Hall of Records.

I have here two other letters. They are signed by Francis Stetson. I want to say this about Mr. Stetson — Mr. Stetson is an able corporation lawyer, and not only that, I think he is better versed on electric engineering than any lawyer in this city or state.

One of the first letters is dated July 25, 1911, in which I made good as to the protection of this property. The second is dated May 14, 1912. It relates to a certain report that I made on a building in this city which the firm of Waldman & Co. were to occupy. This is what he says — "I have just now received your letter of yesterday with its enclosure and am forwarding the same to my friend, Mr. Lamont of J. P. Morgan & Co., with my strong recommendation."

It seems to me that with these endorsements I have had from Mr. Edison and my standing in the electrical world, I should have been able to attract the attention of Mr. Whitney and other members of the Public Service Commission. I have been trying it since 1911 and haven't been able to make any impression.

Later, I thought I would remind Mr. Willcox of throwing me down. Here is what I said on January 3, 1916: "As set forth in the accompanying Brooklyn Eagle clipping, I was about thirty years ahead of the times when I devised the method of selective signalling. My discovery is now used in the New York and other subways and electrified railroads. Time has also fully shown that when I first called the attention of the Public Service Commission in 1907 to the prevailing and improper electrical engineering, I was the only electrician in this city who fully understood the great grounding tendency of the electric railway currents. The City of New York is now paying the penalty for the neglect of the members of the Commission to cause a proper investigation to be made of the prevailing improper electric engineer. The frequent breakdown of insulations of the New York subway about Fourteenth Street, Grand Central and other stations fully confirms the statement made in my letter to you dated September 9, 1910, that the excessive heat in that subway is due to the tendency of electricity not to flow in in a metallic circuit." I also called his attention to the necessity of properly safeguarding the steel subway tubes beneath the Harlem and East River against the escaping currents of the elevated and trolley railways in Manhattan and Bronx and Brooklyn.

I will add that the electric system installed in Brooklyn in the Fourth Avenue Subway is defective both from the true electrical and lightning standpoints.

Mr. Chairman, I want to call your attention to one thing — the steel cases of the elevators in this city are being destroyed by the currents of the Brooklyn Bridge and Manhattan Elevated Railroads. This destruction is going along and eventually they will all break down, and there are quite a number of them. There is the Tribune Building, the City Investment Building, the large buildings controlled by the United States Realty Company. The

expenses of repairing those plunger elevators will have to be paid by somebody. There was one case in Philadelphia, the Bellevue-Strafford, where it took about four months to fix up, and it cost about thirty-five thousand dollars. You are going to have a pretty good bill.

I have found out this — it varies in certain localities. There was one case where a pipe was eaten up over night. In other cases, where it goes through a wide area, like down in Bayonne where it took ten years to destroy them.

One of the reasons why this trouble has not been taken up here is that this trouble is extended over such a great area. It takes a certain length of time. It will manifest itself in due time. Take the New York World Building —

Senator Thompson.— If you can put that in writing in some way, it would be better —

Mr. Spang.— When you have time, I would like to go over this subject with you.

Senator Thompson.— When I have time, I will be glad to do that.

I don't like to cut you off here, because the matters that you have are very important, and I realize that you have information here that will be of great value. It is too bad that the Public Service Commission won't hear you on this matter, because they could use your information to advantage. It may be that the new Commission will hear you.

Mr. Spang.— Oh, no, I don't take any stock in this Commission. I tried Mr. Hayward not more than four months ago, and he is just like the rest of them.

Senator Thompson.— Mr. Whitney has the responsibility now.

Mr. Spang.— Just one more word — an electrician informed me a few days ago that I ought to be at a meeting the next Monday and I went. It seems that they had a question up a few days ago about the insulation of wires in the car barns, etc., of one of the companies. The whole thing was a regular circus. They were all "balled up." There was not a single one who was able to state anything.

Senator Thompson.— Now, Mr. Walker says he wants to talk for five minutes.

MR. WALKER: (Insurance business, 100 William St.) I hope that what I have to say will be applicable to the subject for which this hearing is held. I represent a section of Brooklyn which is soon to be served by the Interborough extension of the present road up through the eastern part. For many years we have labored to have those extensions made. First, we had hoped that the Interborough would build these roads with their own money, but, due to the opposition of other sections of Brooklyn, and the opposition which the present Mayor and Mr. Maltby made, our hopes were blighted. But, thanks to the agreements that were perfected by Mr. Willcox and Mr. McAneny and the rest of the gentlemen, our road was started.

Now, that road has been in course of construction for nearly two and a half years. The completion of the work, as provided by the last contract, is fixed for April, 1918. We are vitally interested that this Committee, or any other body, will not do anything to interrupt the completion of the work.

We realize that the old Commission, the Commission which has gone out, did some things that perhaps it should not have done, but it is gone, and our present Governor has appointed a complete new Commission. The honorable body of which you are a member, Mr. Thompson, has confirmed those men, and we ask you, for God's sake, to leave them alone and allow them to do something.

Senator Thompson.— They haven't confirmed them with anything like the emphasis that you are giving to it.

Mr. Walker.— I take it they won't take their oath of office unless they are confirmed. We have no criticism of you or anybody else who voted against it. You, of course, as a senator, had a voice in the selection of those men, as provided by the Constitution, and if you thought they were not fitted for the office, all right. You voted against them, but that matter is gone, and we beg you not to go into post mortems but to let the work go on.

I am told by one of the contracting companies that since these

hearings have begun, the engineers of the Public Service Commission are not going out over the jobs watching the contractors as they did before. I am told that that is because they are constantly being subpœnaed to these hearings and taken away from their work. We beg you not to interrupt this work. As regards legislation which was proposed —

Senator Thompson.— There are two thousand five hundred of those men, you know, and we have only had three of them over here. You can't go down through the street without falling over a few of them. Far be it from us to interfere with their work.

Mr. Walker.— Governor Whitman has appointed five men and they are now on the job. Our desire is that they be let alone and allowed to go on with the work.

We don't think that it would be the part of wisdom at all to change the statute so as to turn it over to some other body. I doubt whether you can effect that, because it would be a city bill and the Mayor would refuse to accept it and the present city officials refuse to take this construction work out of the hands of the Commission. In any event, I doubt whether there would be any saving of expenses, because if a new body were created, they would have to take over this entire engineering staff or get a new one. Surely they couldn't begin to organize a new one with the work going on now. For that reason, I think it would be calamitous for this body to interfere with the work.

Another thing — I certainly would be unalterably opposed to the delegating of these powers to one man from each borough. Why, what would happen to it? Three of those fellows would get together, probably the three from the smallest boroughs, and they would immediately say, "Here we have to have subways built in our boroughs," which might not be needed at all. The result would be that nothing would be done.

We have had experience in this city with Boards of Aldermen tying up the city authorities and stopping the work. For that reason, we would ask that whatever legislation you propose, that it do not in any way interefere with the work. Let the work go on and let the subways be completed, and then we can take the

matter up of what public officials are to take care of the operation of the roads and provide for additional work afterwards.

Senator Thompson.— There are some kinds of work that have been going on here that we are anxious to interrupt, and it hasn't anything to do with the physical end, either.

Are you connected in any way with any of these transportation roads?

Mr. Walker.— No, sir.

Senator Thompson.— Any of them?

Mr. Walker.— No, sir.

Senator Thompson.— We will hear from Mr. Schlosser next.

Mr. Peter Schlosser.— The subject before the house, as I understand it, is whether the subways are to be municipally managed or whether they are to remain in private hands, and the doing away with the present Public Service Commission. Well, I heartily agree with everybody who has proposed doing away with the Public Service Commission, because their worthlessness and their criminality, their cupidity and every other name you could call it by, can't be too heavily stigmatized.

But I don't know whether the remedy you are proposing isn't worse than the disease. You propose to have the municipal people take charge of the subway. Wasn't it the municipal people who signed these dishonest contracts and helped swindle the city? Have we any hopes that the new ones will do any better. Yet, there is another question in the whole subway situation that none of the previous speakers have brought out.

While I don't seek in any way whatever to condone any of the offenses of the subway commission (I speak for a large number of tenants, represented by the Tenants' Union), yet I also want to say — it always takes two parties to commit a sin, not only the subway commission but others. And I want to say also that the beggings and the inducements thrown at the Public Service Commission to get them to be dishonest were not done by the Public Utilities Corporations alone, not done by the public servants represented in the municipality or State, but they were done by private individuals.

The original idea of creating the subways was not because we needed them for transportation. We had plenty of railroads in New York that could be utilized and compelled to carry people for a five-cent fare, so we wouldn't need the new subways. But, to give you the siuation in very short words, when Comptroller Metz, I believe, in 1908 promised the Bronx Board of Brokers a new subway, I immediately wrote him:

We will build new tunnels, transit routes,
They will make a grand display,
Increase the value of your lots,
Sixty, seventy miles away.

They wanted subways so they could sell their two dollar lots in the suburbs for two thousand. They fool poor mechanics in New York into buying them in the belief that all of the assessments have been paid. After they have invested their whole life savings in them, they will get a terrible assessment. They will be sold to them free and clear, and afterwards there will be a blanket mortgage that hasn't been released.

I also want to bring to your notice one particular instance. In Two Hundred and Twenty-second street, the Hudson river where they are shooting Indians to-day yet, where there isn't as much traffic as there is on One Hundred and Forty-ninth street and Third avenue, there is a proposition to create an improvement there that is going to cost $57,000. The total property in that zone is valued at $5,000. On a lot, the maximum value of which is $50, the assessment will be $576. Gentlemen, I am afraid if you proposed that in some lunatic asylum, one of the rabid patients would call you crazy. Yet, two of our aldermen voted for such a project. They must have paresis, otherwise I wouldn't know what excuse to give for them.

Now, let us get back to removing the Public Service Commission. All right, but, gentlemen, first and foremost, before you remove the Public Service Commission, I want to ask you, in the name of every honest man in New York City, remove a far more despicable, a far more contemptible body — I refer to the Bar Association of New York, because no matter how loathsome a crime has been committed, no matter how much the money stinks, you

can always get some honored and eminent member of the bar to defend it.

We have four judges on the Court of Appeals, gentlemen, who can't sit in the New York Central case, because they own stock in the railroad. Our Bar Association tolerates this. They think it is right. I suppose anything but murdering a member of the bar is allowable. I am giong to conclude, to take no more of your time, by asking you — is not your own counsel, Mr. Moss, while acting as inquisitor of your body, also the private attorney of Robert Colgate Wood? (Applause.)

Senator Thompson.— I might say, for the last statement, that when we employed Mr. Moss that was given to the public and was understood.

Miss Dorothea Frooks.— Mr. Chairman and Gentlemen: As editor of the Public Service Record, I am very much interested in these public affairs and have taken advantage to come here and say a few words to you.

I have heard the preceding speakers, and the thought formulated in my mind that it is a great pity that more men do not take an interest in their public affairs. I cannot understand, since it really deals with the very atoms of existence, that more men in New York City don't attend these hearings and listen to the investigations going on. I don't see why you permit a small body of men who are strong only financially to have the strong whip over you and you people just letting yourselves be submitted to them in every way.

If you men would only unite and stand by this Committee and realize the work they are doing, you would be doing something for yourselves, because you want to realize that this city is constituted of I, you, and another I and another you. You don't want to forget it.

Even if you never thought about it, everyone here, every man and woman, has something to do with the city, and if you let any small body of men who are financially strong get the best of you, you are their servants, and as long as you permit them to have the strong whip over you, you are going to be their servants.

It puts me in mind of a story of a father who gave each of his seven sons a stick and he told each son to break that stick, and each son did. The father went on to say, "You see that each stick can be broken." Then, he put them together, and the sticks could not be broken. From this incident he took the moral that if you stand separated, you are going to be weak; if you unite in strength, you are going to be strong.

There is one thing which the Public Service Commission is taking care of which should be advanced to some other bureau, and that is the inspection of the gas and water meters. It seems that the Public Service Commission charges for this. That money goes to the revenue of New York. That money comes from the poor, cold-water tenements of New York, and I would suggest that this be taken from the Public Service Commission and transferred to the Bureau of Weights and Measures, since it comes nearest to the home of the gas and electricity meters, and that is one of the functions of the Bureau of Weights and Measures.

I feel as Senator Thompson does about certain matters, that large corporations deriving a profit for the city franchise, should have a city representative. It seems fair that every corporation, private or public, which has a city franchise and derives profits therefrom should have a representative from the city who should make annual reports, and give the information from these corporations to the city. That would prevent a great deal of fraud and a great deal of this inconvenience of having all these investigation committees.

You men have the opportunity to do it now, since you have your votes. I might add a word about the women. The woman is becoming socially and economically strong. She is becoming a social and economic power, a commercial and a political power, a power that is gathering strength day by day, a power that is bound to lift woman to the equal plane of man in every line of endeavor and in every walk of life. As soon as they get their votes, they are going to help you. But, in the meantime, gentlemen, you want to protect your city interests, because the city's affairs belong to you, and you are part of the city. Remember the old motto, united we stand; divided we fall. Thank you. (Applause.)

Mr. Leo Kenneth Mayer (1307 Putnam avenue, Brooklyn): I

am taking the liberty of excepting to the opinions of my good friend, Mr. Walker. He urges the leaving alone of the Public Service Commission and leaving unmolested its present personnel. The Public Service Commission of to-day is worse than that body has been since its inception. There is at the head of that Committe a man who has hidden behind the cloak of charity, who knows absolutely nothing about the Public Service Commission's law, and lacks the power of interpreting that law. There has recently become a member of that body a member who knows the law but who refuses to interpret that law to the best interests of all concerned, I mean according to the interests of the people.

Mr. Whitney has for the past year or so refused the citizens of this city access to and examination and inspection of the informal records in his department. There is a reason for that. It is the informal records, Mr. Chairman and Gentlmen, of that Commission that tell the sins of commission and omission of that department. Somebody was talking this afternoon about the new body being better than the old one. I had occasion to go to the offices of the Public Service Commission this afternoon, seeking to gain access to and inspection of the file and complaint No. 639, and was informed that on the first day of his appointment Mr. Whitney is not in the office, that the file that I had requested is locked up in his desk and that I could not obtain access thereto.

Q. Did it strike you that Mr. Whitney might be in Albany being sworn in to-day?

Mr. Mayer.— I was told he was at home.

Mr. Moss.— Do you mean the file should not be in his desk?

Mr. Mayer.— Yes — Mr. Sheehan this morning spoke in reference to the mailing of calendars. I have home a calendar setting forth the time and place of hearings for January 14 and 15, 1915. The first hearing on that calendar was set for ten o'clock, referring to the construction, equipment for the New York Consolidated Railroad Company, in which I was particularly interested. That notice of hearing was mailed at the Hudson Terminal Station at 11:30 January 14, or one hour and thirty minutes after the time of the first hearing. It was Mr. Whitney who very abruptly and un-

equivocally said that we could not obtain access to and inspection of the files. It is those things, Mr. Chairman, that we need in order to prepare our cases for trial before that body.

The New York Consolidated Railroad Company has commenced certiorari proceedings for the purpose of having the court review the record in case No. 1924. The court had stricken out of the papers that part of the relator's prayer asking for a stay of order. When I asked the Public Service Commission, after the last snow storm to enforce the order issued by the Public Service Commission, I received a letter from the Secretary, under date of February 17, 1916, informing me that on December 28 the Chairman of the Commission had been served with a petition, writ and order of certiorari, and that return thereto had been made. The latter part of that statement is false. The return to the writ of certiorari had not been made and had not been filed in the office of the County Clerk of the County of New York until the 23rd day of February, or five days after my letter in response to Mr. Whitney's letter dated February 17th.

A year and a half ago, I asked Mr. Whitney for certain information concerning the date of purchase, or the date of building of certain cars, and Mr. Whitney told me that he had not that information in his custody, and respectfully referred me to the Second District. I applied to the Second District, and was then informed by that Department that it would be the First District that could furnish me with the information, and it was in the offices of the Public Service Commission for the First District that I obtained that information.

The Public Service Commission has apparently been playing into the hands of the corporations. The Public Service Commission, as at present constituted, seems to consider complaints not from their merits but rather from the persons who make those complaints, and I speak from experience. The Public Service Commission will permit matters in their hands and under consideration to go into a state of cornolence, for, after all, P. S. C. stands not for Publc Service Commission but rather for Precrastinating Somnambulistic Commission.

I have been manifestly interested in the Public Service Commission's law. I have undertaken a slight study of that law and

have prepared a few suggestions. The copy of it which I hold in my hands belongs to the file of the Municipal Library, and if you will bear with me for a few moments, I desire to read it. (Reads pamphlet.) (Applause.)

The following was ordered copied into the record:

"Memorandum of the Citizen's Union of the City of New York against the transfer at this time from the Public Service Commission to any other body of control over the construction of Rapid Transit lines in New York City.

"To the Joint Legislative Committee to Investigate Public Service Commissions:

"The Citizens' Union respectfully submits this memorandum in opposition to any transfer at this time from the Public Service Commission to any other body of control over construction of rapid transit lines in New York City.

"The Citizens' Union believes that any legislation to accomplish this purpose at this time would be exceedingly unwise and adverse to the best interests of the City.

"The dual contracts involve not only the construction of new lines but the reconstruction of practically all the elevated roads in the City. During this period of reconstruction, service must be maintained and its regulation and control coordinated with the construction work. An example of what this means is the situation at Times Square where the Seventh Avenue subway is being joined to the old subway line and the Broadway line carried underneath. All of this work must be done without interruption to the present service. If the Commission's engineering staff did not have the entire situation in hand and there were a conflict of control between regulation of traffic and supervision of construction, disputes and delays would doubtless occur, and serious accidents with loss of life might result.

"From the standpoint of the City's finances also, we believe that a division of control would tend to increase expenses.

"While it is estimated that of the annual expense of the

First District Commission only fifteen per cent. is now chargeable to regulatory work, this does not represent the total cost of that work for the construction staff is used very largely in an advisory capacity on problems of regulation. It is safe to say that if the work were divided, the cost of the regulatory work, owing to the maintenance of spearate staffs, would be twenty-five per cent. to thirty per cent. more than at present. We are also confident that if the functions of the Commission were now divided, the duplication of organizations would greatly increase the total expenses to the City.

"Aside from the standpoint of expense, any legislation that would hamper or delay the completion of the new rapid transit lines would be a severe blow to the whole City.

"As to the capacity of the Board of Estimate and Apportionment to take over in mid-stream, so to speak, this enormous construction enterprise and handle it without detriment to its progress, we believe that those who are in touch with the City administration realize that the Board is already seriously overburdened with work which is constantly increasing and will continue to increase until a new City Charter simplifies our municipal government. We believe that to increase the strain already on the Board by adding a load of this magnitude could only result disastrously to the City.

"CITIZENS' UNION OF THE CITY OF NEW YORK,
By (Signed) W. E. Youker,
Secretary."

March 17, 1916.

Meeting adjourned until Saturday morning, March 18th.

MARCH 18, 1916.

Senator Thompson.— Before you are sworn, Mr. Cedarstorm, I want to make a statement. I was told yesterday that one of the local papers carried a statement, apparently from me, to the effect — it was published last week — that Mr. Cedarstrom had

resigned because he couldn't get money enough out of a real estate transaction over there, or something like that. That, on the face of it, looked to be a discreditable statement from me in reference to Mr. Cedarstrom. I want to say I never have met Mr. Cedarstrom before. This is the first time I ever saw you and I have never talked with you, and that statement never came from me nor anything like that. The statement I did make was entirely in your favor, to the effect that you, in my judgment, were a good and an honorable real estate appraiser, and that yhen your figures had been made on one transaction at fifty thousand dollars and were raised over your head thirty-five thousand dollars, I made the statement that I understood you resigned, all of which was extremely creditable to you.

Mr. Cedarstrom.— Thank you.

Senator Thompson.— I wanted that statement made before you were sworn, or before I ever talked with you, because I didn't want you to think that any such statement came from me. I understood that you had thought so and felt bad about it.

MR. SIGMUND CEDARSTROM, being duly sworn, testified as follows: (Questions by Mr. Frank B. Moss.)

Q. How long have you been connected with the Public Service Commission? A. My first connection, I think was on June 1, 1914.

Q. What is your relationship to the Department? A. With the Public Service ommission at the present time?

Q. Yes. A. Real estate expert.

Q. What are your duties? A. To report on such real estate matters as are referred to me for determination or recommendation.

Q. That is, as to the values? A. As to the value and as to the reasonablenness of the transaction as a whole and as to whether we should take all or a part, and general recommendations along real estate lines.

Q. What has been your experience before you went into the

Public Service Commission? A. About twenty-five years of real estate work.

Q. Doing what? A. Appraising, buying, selling and general real estate work, principally appraising real estate.

Q. I want to ask you some question about transactions that occurred in the neighborhood of that Thirty-eighth Street cut. You know the situation that I refer to, don't you? A. Yes, sir; between Fourth and Tenth Avenue.

Q. Yes. Now, I understand there were a number of transactions that were more or less related to that operation. Am I right? A. Yes, sir.

Q. You were not employed by the Public Service Commission at the time the price was fixed for that Thirty-eighth Street right-of-way, were you? A. No, sir.

Q. And have you ever made any figures upon that transaction so as to be justified in expressing an opinion as to the value of that right-of-way? A. No, sir.

Q. What was the first transaction in that neighborhood that you came in contact with? A. May I refer to my files?

Q. Yes. A. The first transaction that I recall that might be considered in connection with the Thirty-eighth Street easement was in February, 1914, a lease that was submitted by the New York Municipal Railway Corporation for approval by the Public Service Commission that included certain waterfront and upland to be used as a storeyard at Second Avenue and Thirty-eighth Street.

Q. Who was to make the lease to the Municipal? A. The South Brooklyn Railroad Company.

Q. Isn't the South Brooklyn Railroad Company associated with the Municipal Railroad Company? A. It is a subsidiary company.

Q. All a part of the B. R. T. System? A. I so understand it.

Q. What did this South Brooklyn Railroad Company want to get for the property that they were to lease to the Municipal Company? A. I have a report here before me that I made —

Q. I wish that you would just, without beind led by too many questions, give us a history of that and of the differences that

arose. A. I have a report here before me dated February 20, 1914, with reference to that matter, and in which I state:

> "I examined the property and the terms of the lease submitted with the communication of January 5, 1914. The terms briefly, were:
>
> "Lease for a term of five years, New York Municipal Railway Corporation the leasee, to pay ten thousand per annum, seventy-five per cent. of all taxes of every character and water rates.
>
> "The said taxes alone are over six thousand dollars per annum, which would mean a rental of about fifteen thousand per annum, all improvements of a permanent character to become the property of the South Brooklyn Railroad Company on the expiration of the lease, without any payment for same. Part of the property is land under water which the South Brooklyn Railroad Company agrees to fill in to grade within fifteen months.
>
> "I am of the opinion that the rental and terms of the lease, as submitted, are not reasonable."

I took up the question of rental in turn with Mr. Bennington, of the South Brooklyn Railroad Company, with the result that the following rental and terms were submitted which, in my judgment, are a fair basis for the lease between the New York Municipal Railway Corporation and the South Brooklyn Railroad Company, namely:

> "Eight thousand per annum until land now under water is filled into grade, and the lessor agrees to place on grade within three months; otherwise, the lessee may fill in and charge the expense to the lessor. Twelve thousand five hundred per annum after the property is on grade, the lessee to pay only such taxes as may be levied on account of temporary buildings or structures the lessee may erect. On all other improvements of a permanent character, the lessor agrees to pay the taxes.
>
> "All improvements or structures of a permanent character which would tend to increase the value of the land from a

real estate standpoint the lessor agrees to pay for at the expiration of the lease. It is understood that the lessor is to have the privilege of using part of the railroad tracks."

Q. What was the difference in value between these two propositions? A. I analyzed it at the time. I haven't that analyzation with me, but from this it would appear that they were to pay seventy-five per cent. of the taxes and that the rental would be about fifteen thousand per annum and that the improvements were to revert to the lessor. The agreement as a result of the negotiations, was eight thousand per annum until the land under water was filled into grade, and gave the lessor the right to grade it in case the lessee did not; and twelve thousand five hundred per annum after it was onto grade, the lessee only to pay such taxes as are levied on account of temporary buildings and all such improvements of a temporary character. For all improvements of a permanent character, the lessor agreed to pay at the expiration of the lease.

Q. What was the course of proceedings there? What difficulty did you run up against? A. Why, simply that this lease was submitted as being, in the opinion of the New York Municipal Railroad Corporation, equitable. I didn't consider it so, so I took it up with Mr. Bennington, the Secretary of the South Brooklyn Railroad, with this result —

Q. I understand, but you didn't find Mr. Bennington willing to agree at once? A. No, because he submitted it for the reason that he thought it was fair.

Q. You had to fight it through, didn't you? A. I may have called his attention to some facts that he didn't have knowledge of.

Q. How long was it pending? A. I really couldn't tell you. My memorandum doesn't show here. I usually make my report when I have a recommendation to make. I don't know when the matter was referred to me from them. It depends a good deal upon the urgency of the matter, too, as to what other transactions I may have.

Q. Yes, I know. Well, I will ask it in this way — Did you find the Municipal Railway Company objecting to the rental that the South Brooklyn Company was asking for? A. No, on the con-

trary; the mere fact that they submitted the lease to us for approval would indicate that in their minds they thought the rental was reasonable.

Q. Now, the Municipal Company, being asked an exorbitant rental, in your opinion, submitted the proposed lease to you to be approved? A. Yes, sir.

Q. So that the Company that was to pay the money seemed to be willing to pay an exorbitant price? A. Well, my analyzation would tend to show that, and the result would tend to show that they agreed with me.

Q. And finally you had to convince the fellows that were going to pay the money that they were paying too much? A. I didn't come in contact with anybody directly in the New York Muncipal Railway Corporation in this matter that I recall.

Q. But did you find anybody in the Municipal Railway Corportaion that was interested at all in reducing the amount of rental? A. I didn't look for anybody, because Mr. Bennington was the Secretary of this Company, and he was the man with whom I took up the negotiations, to convince him that it wasn't reasonable.

Q. Who did Bennington represent? A. The South Brooklyn Railroad Company.

Q. Well, who was representing the Municipal? A. I didn't meet anybody on that particular transaction.

Q. Have you found that situation to occur at other times? A. The officers of the subsidiary companies and the officers of the New York Municipal are so interwoven that it is hard to tell whether you are talking to a New York Municipal man or to an officer of the other company.

Q. And whatever you had been willing to pass, they would have taken? A. If I approved of this lease, it would have been made, in my opinion.

Q. Why was it up to you, or, up to the Public Service Commission? What interests had the Public Service Commission in it? A. I understand that this would become a charge against construction, the same as if they were constructing a part of the elevated structure or acquiring real estate.

Q. Charged up against the city? A. Charged up against the

city, against the preferential, as I understand it. The New York Municipal advances the money and then it is charged up so that it becomes a charge in that way.

Q. Well, then, you didn't find any disposition to reduce the burden of the city, did you, in either of these railroad companies? A. Why, no; they thought that they were submitting a proposition which to their minds was reasonable and for the interests of all parties concerned.

Q. Is this Mnicipal Railway Company the company of which Colonel Williams is President? A. Yes, sir.

Q. Is he also President of the South Brooklyn? A. I believe he is.

Q. Well, then, the President of the South Brooklyn was willing to pay the President of the Municipal whatever you would be willing to approve. That was about the size of it, wasn't it? A. Of course, the mere fact that I approve it doesn't mean that they would get that, because it would go before the Commission.

Q. Oh, yes, but you were the man to enlighten the Commissioners on the values of real estate? A. Yes, sir.

Q. Do you know whether or not Colonel Williams gets a salary from the South Brooklyn Railroad? Did you ever look into that? A. I don't know.

Q. Do you know whether or not he gets a salary from the Municipal? A. I really don't know. I have had no occasion to go into that question.

Q. Have you ever talked with Colonel Williams about these matters? A. On larger matters, but not small matters of this kind.

Q. Mention some larger matters. A. About the only time I have been with Colonel Williams on these matters is when I have been called before the Commissioners, where I have been under cross-examination. I have never had any occasion to really negotiate with him.

Q. Has he ever spoken or written concerning your activities? A. Oh, yes.

Q. What has he done? What has he said? A. In a letter dated February 3, 1916, to the Hon. Oscar S. Strauss, Chairman of the Public Service Commission, 154 Nassau Street, New York City, the following was received from Colonel Williams, as President of the Prospect Park and South Brooklyn Railroad Companies —

Q. That is another of the little railroads. Go on. A. He makes this statement:

> "Judging from our past experience, it will be impossible for us to name any figure representing the value of the easement which your real estate expert will approve. I would suggest, therefore, that the city either proceed by condemnation to acquire the necessary easment or that it agree with us upon an arbitrator who will determine upon the value of the easement merely from a real estate point of view."

Q. In that matter, what company was going to pay the rental? A. This was not a rental. This was an acquisition of an elevated railroad easement along Thirty-seventh street from about Tenth avenue to Gravesend avenue, about four-fifths of a mile. The city was buying this easement.

Q. For what? A. For an elevated railroad extension of our subway line.

Q. Of what line? A. Fourth Avenue Subway Line.

Q. That is a Municipal Railway line, isn't it? A. No, that is a city owned line, and we acquired the real estate there.

Q. The city would have to pay for it? A. The city would have to advance the money in this particular case that he mentions here.

Senator Thompson.— This real estate, as I understand you, was found to be owned by one of these subsidiary railroads over there in the beginning? A. Are you speaking of this last?

Senator Thompson.— No, the one you were talking of before. A. Yes.

Senator Thompson.— When it came originally before the Commission, it was owned by one of the subsidiary railroads? A. Yes, sir.

Senator Thompson.— And they rented it to another subsidiary railroad? A. I would hardly say that the New York Municipal was a subsidiary company.

Senator Thompson.— They rented it to the Municipal Railroad, which was a part of the B. R. T. System, the same as the previous

railroad was? A. As I understand it, the New York Municipal Corporation was formed to take over the subway contracts.

Senator Thompson.— Then, the other company that owned the real estate was a subsidiary to the B. R. T.? A. Yes, sir.

Senator Thompson.— And that subsidiary of the B. R. T. first leased the property to the New York Municipal Railway? A. They agreed upon terms for a lease and submitted it to the Public Service Commission for approval.

Senator Thompson.— Then, later it was necessary to take this real estate and give it a valuation to be put in the construction account and charge it to the city? A. As to the reasonableness of the terms of the lease. We didn't acquire the real estate. We simply leased it for a term of years in that particular instance.

Senator Thompson.— I was wondering if the rents paid in this way by one corporation to another were used later as a basis on which to figure the value of the real estate rented. A. We tried pretty hard not to let them get any such basis as that.

Senator Thompson.— Did they do that? A. I couldn't testify to that of my own knowledge.

Senator Thompson.— Have they tried it? A. Well, I couldn't say that of my own knowledge.

Senator Thompson.— What is your opinion? A. I think that wherever they have an opportunity to lay a basis for some future deal to get a good price for it, they will do it.

Senator Thompson.— Colonel Williams makes a lease with himself and then uses that as a basis to fix the value of the real estate to turn over to the city. A. I think they would use any recommendations of mine in order to show the reasonableness of other figures they might submit later on.

(Mr. Moss resumes the examination of the witness.)

Q. Now, let us go to the next transaction. I think we have finished the first one, the Second Avenue proposition. What comes next? — While you are looking for that, I want to ask about some-

thing else that just occurred to me. Do you know what that stamp is? A. Yes, sir.

Q. What is that? A. Why, in 1914 there was a resolution passed by the Commission for the approval of vouchers that were submitted to be charged against construction.

Q. Will you look at this and see if this is a copy of the resolution, "Vouchers for Expenses to be Charged to Construction"? A. As I recall it, that is substantially the resolution.

Q. That I have had copied from the record and no doubt it is correct. You use that and use that stamp, don't you? A. No, sir; there were some vouchers submitted that I did use that stamp on, but I don't use that in any of my recommendations or reports. But, there were certain charges there for real estate expenses, appraisal fees and other charges of that kind, and, after these recommendations, an approval had come in, and I did use that stamp.

Q. What other men act under this resolution? A. I really couldn't tell you. I don't know.

Q. Does Mr. Coler act under this resolution? A. I believe he does. I believe all men who certify as to the reasonableness of charges on the vouchers act under that resolution. That si my understanding.

Q. Does Mr. Schermerhorn use it? A. My understanding is that they are all passing on vouchers under that resolution.

Q. I want to read this resolution in:

"December 11, 1914.

"Contracts Nos. 3 and 4, and Related Certificates.

"Certification by bureau heads and division heads of statements of costs of the Interborogh Rapid Transit Company and the New York Municipal Railway Corporation.

"The Secretary presented the communication dated November 30, 1914, from the Chief Engineer of the Commission, with reference to the requirements under the rules adopted by the Commission for the Chief Engineer's determination of costs under Contracts No. 3 and 4 and related certificates with the Interborough Rapid Transit Company and the New York Municipal Railway Corporation, dated March 19, 1913, for the construction of rapid transit rail-

roads, that the various bureau and division heads of the Commission who pass upon the charges making up the Chief Engineer's determinations should certify to the correctness of the company's statements with respect to such charges, and stating that the policy was assumed to be followed, that the certification of the bureau or division heads meant that charges may be included in the cost of construction and equipment upon the basis of their having been examined and no reason having appeared for objecting to them, unless causes for suspicion arise and except in the case of substantial amounts."

Now, that means that the heads of departments may approve matters that are to be charged up to construction without examining them, doesn't it, unless their suspicions are aroused or unless the amount is large? A. I would hardly say that. I assume that under that resolution there, if the amount appeared reasonable, basing it on your general knowledge and experience, that you approved it.

Q. Who was the person who was to determine whether it is suspicious or not? A. The man approving it.

Q. That is the head of the department? A. The head of the department or whoever had charge of it.

Q. Isn't it a fact that very many items that are charged to construction are nat specifically examined under that resolution? A. I don't know that of my own knowledge. I have disregarded that resolution entirely.

Q. Why? A. I simply disregarded it because that is my method of doing things. That is all.

Q. But there is a method provided, is there not, by which charges, numerous charges, to the cost of construction, may be passed by the heads of departments without special observation and investigation? A. I never read that resolution in that light. I assumed that if I approved something that I said on the face of it appeared all right, and it was afterwards determined that it was unreasonable, that it would be a reflection on my judgment on the matter.

Q. Now, we will take the second item there. A. That is a

report dated November 13, 1914, and refeering to a proposed lease, dated August 15, 1914, between the New York Municipal Railway Corporation and the South Brooklyn Corporation, covering the area bounded by Thirty-seventh, Thirty-ninth Stret, Second and Third Avenue and the right-of-way between Third and Fourth Avenue, Brooklyn, which was referred to me by them for report as to the rental value. It is addressed to Mr. Travis H. Whitney, Secretary. I stated:

"I have examined the property and the terms of said lease. Briefly, the terms were:

"Lease for a term of five years, the New York Municipal Railway Corporation the lessee to pay eighty-two thousand per annum; and the South Brooklyn Railway Company, the lessor, preserving for his use a part of the property.

"I am of the opinion that the rental, as submitted, is not reasonable, and I took up the question of rental with Mr. Bennington, of the South Brooklyn Railway Company with the result that he agreed to recommend a rental of fifty-eight thousand five hundred per annum for a term of five years, which, in my judgment, is a fair basis of rental.

"Mr. Bennington 'phoned me this morning to the effect that the South Brooklyn Railway Company would accept a figure of fifty-eight thousand per annum for a term of five years, provided the South Brooklyn Railway Company received the approval of the same from the Public Service Commission today.

"I desire to call your attention to the fact that fifty-eight thousand five hundred per annum is divided into two parts, namely, twenty-five thousand per annum for the land and thirty-three thousand five hundred per annum for the buildings, track, overhead work, machinery and other improvements now on the premises. The latter figure of thirty-three thousand five hundred has received the approval of the Engineering Department of this Commission as a fair basis of rental.

"Mr Bennington has also agreed to this subdivision as being proper and fair."

Attached hereto is a communication from Mr. Bennington, Secretary of the South Brooklyn Railway Company, dated November 13, 1914, accepting the figures of fifty-eight thousand five hundred and transmitting two copies of the proposed lease with the new figures of fifty-eight thousand five hundred in place of the original figures of eighty-two thousand per annum.

Q. How much a year did you reduce the rental provided in that lease that had been agreed upon? A. Twenty-three thousand five hundred a year.

Q. Twenty-three thousand five hundred on an original proposition of eighty-two thousand? A. A total reduction on the entire lease of one hundred seventeen thousand five hundred dollars.

Q. For how many years? A. Five years.

Q. Well, now, there was a case where the Municipal Railway had agreed to pay the South Brooklyn in the course of five years a hundred and seventeen thousand dollars more than they turned out to be willing to pay when you had taken it up and discussed the terms. Is that right? A. They were willing to pay the original figures, but the reduction was the result of negotiations.

Q. And they were willing to put it through on the reduced basis as soon as you argued it with them? A. It took a little argument.

Q. How long did it take you to save that hundred and seventeen thousand dollars for the City of New York? A. I don't recall it. I never keep track of such things.

Q. Did you meet Colonel Williams in that transaction? A. No, I did not.

Q. Do you happen to know what companies they were that paid him his bonus? A. I do not.

Q. Did you really have very much trouble to reduce the figures of this lease or did they give in to you as soon as you presented an opposition to their arrangement? A. It takes considerable time on some of these matters to accumulate data and facts by which you may show the reasonableness on one side and the reasonableness on the other side. That really takes more time than the arguing of the question.

Q. Did you get any help from the Municipal Railroad in re-

ducing the amount that they had to pay for rent? A. No, I didn't look for any.

Q. You didn't expect any, did you? A. No, I didn't.

Q. What is the next transaction? A. The next transaction is embodied in a report dated May 19, 1914, to Travis H. Whitney, Secretary. That was with reference to the "proposed agreement between the City of New York and the Transit Development Company for the purchase of certain properties in order to permit of changing the type of construction from a railroad with retaining walls to a railroad with earth-slopes. Location of property proposed to be acquired as shown on blueprint attached."

Q. What was that transit company? A. That is a subsidiary company of the B. R. T., as I understand it.

Q. Yes, go on. A. According to the agreement, the purchase price is one hundred and fifty thousand dollars.

Q. The Transit Company had agreed with whom? A. They had submitted an agreement for the city to acquire this property. This is not an acquisition by the New York Municipal; this is an acquisition by the City of New York.

Q. Had any one on behalf of the city tentatively agreed to this? A. They hadn't agreed to it, but the submission of this was the result of a number of conferences and communications going back and forth. They finally submitted this agreement which came to me for analyzation and report.

Q. Was this an agreement to be made by the Transit Company with the Public Service Commission or with some other department? A. No, with the Public Service Commission, and according to the agreement the purchase price is a hundred and fifty thousand dollars. The Transit Development Company agrees to reimburse the city to the extent of ten thousand dollars with the acquisition of the property, which they have not yet acquired, to pay all damage by reason of the closing of certain streets and to cover the cost of condemnation.

Q. Did you say the Transit Company had not yet acquired the property? A. Not all of the properties, no.

Q. They would have to acquire some of this property? A. Yes, they had acquired the majority of it, probably ninety-eight per cent. of it, but there were several parcels that they couldn't. They

agreed, as I stated here in the report, to pay ten thousand with the acquisition of certain properties, and the damages and cost of condemnation would amount to more than ten thousand. "The Transit Development Company also agrees that all awards made by the present condemnation for the opening at Eighth Avenue and other streets should be paid to the city. I assume that any assessments will have to be borne by the city. I am further of the opinion that the assessment benefits will far exceed the amount of awards that we may receive. The Transit Development Company proceeded to acquire these properties about August, 1913. My investigation leads me to believe that the prices paid were much more than their market value or what they may have been acquired for by condemnation proceedings."

Q. Do you mean that the Transit Development Company had bought up these properties in 1913 and had paid more than they were worth? A. Yes.

Q. Then, the Transit Development Company had bought up that which fianally became necessary for the Public Service Commission to have, had paid exorbitant prices, in your opinion, and then were endeavoring to sell this to the city for a hundred and fifty thousand dollars? A. A part of the properties, but, as a matter of fact we were not compelled to buy the properties. However, it necessitated the construction of a retaining wall there that cost us considerable money. I think it was estimated at the time at about two hundred fifty thousand dollars. So, it was figured that by buying these properties for a hundred and fifty thousand dollars there would be a saving in the cost of construction. We could use it for a sloping bank.

Q. What was the result — A. But, let me finish — "The purchase price of one hundred and fifty thousand dollars of this property may be justified on account of the ultimate saving in construction cost of about eighty thousand dollars, as stated in the attached communication of George Coleman." In other words, I simply made the statement that the price might be justified on account of the saving in cost of construction, and I go on — "It is my belief, from a real estate standpoint, that the purchase price of a hundred and fifty thousand in excessive and cannot be sustained by facts."

Q. Then, the only reason why a large sum would be paid would be because it would avoid a building operation by the Public Service Commission, which had really nothing to odo with the value of the property? A. Yes.

Q. What was the result of the operation? A. There were a number of conferences. There are minutes in this file here of meetings that they had where I was cross-examined. I think the final result was that they received a hundred and fifty thousand dollars for the property, although I think the testimony attached here will show that I valued it at about fifty thousand dollars from a real estate standpoint, that part that was taken to be used for the sloping bank.

Q. You put a valuation of about fifty thousand dollars upon it as real estate? A. Yes.

Q. But, did the Commission overrule you? A. I wouldn't say that they overruled me. It was simply that they were awarded a hundred and fifty thousand dollars. The element of saving in cost was taken into consideration by them no doubt.

Q. But, that was simply because it saved the expense of building a wall, wasn't it?- A. Yes, there was a net saving in the cost of construction at that point.

Q. And, are you still of the opinion that that property was worth about fifty thousand dollars? A. Yes, sir.

Q. Well, then, there was a hundred thousand dollars more paid for it than it was really worth, in your opinion? A. In my opinion, from a real estate standpoint.

Q. It was a situation where the B. R. T. subsidiary was able to gouge the city, wasn't it? Now, really, isn't that it? A. This subsidiary company, the Transit Development Company, as I understand it, had no right to acquire by eminent domain. They weren't going to make any public sue of it. The acquired it, I think, to extend the yards at that point, get ingrees and engress across, and, not having the right to acquire by eminent domain they went in and paid for these properties whatever they could buy them for. In my opinion, they paid two and three times the value of the property or what may have acquired them for in condemnation proceedings, having a right to do that. In other words, if they held us up for two or three times the amount, we figured that we could

go into condemnation proceedings and acquire them at a reasonable rate.

Q. Now, shall we go to the next transaction?

Mr. Chairman, these are all related to that Thirty-eighth Street cut for which the Municipal Railroad got a million dollars practically in cash. These are all little turns and twists upon the operation to bring it out.

Senator Thompson.— Were these paid in addition to the million dollars?

Mr. Moss.— Oh, yes, this is in addition to the million dollars.

Senator Thompson.— What do you mean, "from a real estate standpoint?"

A. I mean to the value of the property from a real estate standpoint, without taking anything else into consideration.

Senator Thompson.— What else should you take into consideration? A. That is discretionary with the Commissioners.

Senator Thompson.— Discretionary! But, if you are getting after the value of real estate, you are taking into account every value that goes to make the value of real estate, aren't you? A. Our experience is that they usually get more in condemnation proceedings than the reasonable value of the property. In addition to that, there is the expense of condemnation proceedings. Frequently settlements are made where the owner calls attention to something that justifies the value of the property.

Q. You take that into consideration? A. No, not in fixing my value of the real estate, but when attention is called to those facts, I may then render a report on those. I have in some instances.

Now, in this instance here, there was a saving in the cost of construction claimed by our engineers. I have no method of checking that up or knowing it. If it was a cost of condemnation proceedings or affirmative act on the part of the owner, I could analyze it. So, I state in my report here that it is claimed by the Engingeering Department there is a saving in the cost of construction, and, if there is that saving, it may be justified.

Q. Isn't the city entitled to any benefits ever? A. I simply

make that as an element that the Commissioners might use their discretionary power in.

Q. In buying real estate, you shouldn't allow more because they save cost of construction. A. I never do in any reports I make.

Q. Is there any possible reasonable basis under which that could be considered? A. I don't know what entered into the minds of the Commissioners at the time. I simply know that my attention was called to this.

Q. Their contention is that if there is anything saved in the cost of construction, it should all be given to the railroad and not any to the city? A. I think in this particular instance, the New York Municipal raised the point that if this property could be acquired for a hundred and fifty thousand dollars and would answer the purpose as well as the concrete retaining wall at that point, using this property for a sloping bank and that there was a saving in the cost of construction, they were entitled to have that fact taken into consideration.

Q. Why? A. Because ultimately the construction would cost more and it would use so much more funds of the city.

Q. In other words, they want the city to pay all the cost of the real estate and then, if there was a saving in the cost of the construction, that must be added so that the railroad would get all the benefit? A. I don't think you quite get my point.

Mr. Moss.— I think he got your point. It is what led me to ask the question, whether this public-spirited corporation was gouging the city because of the situation. A. If they paid two or three times the price for it and we simply returned them their money, of course, they wouldn't be making any money out of it.

Senator Thompson.— To whom did they pay that? A. To the owners.

Q. Who were they? A. I made a very careful investigation of the owners there, as to whether there were intermediate parties or anything of that kind. I couldn't discover anything like that. It is usual in all such cases to make a search of the title for sometime back and find out who the owner is and find out what he paid

for it, in reference to mortgages, etc. My investigation didn't disclose that there was anybody in the New York Municipal or the Transit Development Company that profited by the exorbitant figures.

Q. Do you see any reason why the Transit Development Company should have bought up that property at two or three times its value? A. Only, as I say, they had evidently something in mind, not having the right to buy by eminent domain.

Q. What was it they had in mind? A. I really don't know.

Q. Did they make any use of the property? A. At that time, they hadn't acquired it at all. I simply assumed that it was in reference to the yards at that point.

Q. Have they made any use of it? A. We have acquired part of it.

Q. All of it? A. No.

Q. How about the rest of it? A. The rest of it there connects their yards at that point, so they are going back of us, and it gives them a connection. I think the South Brooklyn Railroad is using a part of it. It was a logical thing to acquire.

Q. Does this Rapid Transit Construction Company run any railroad? A. Not that I know of. It is a subsidiary company for the purpose of buying up property for the other subsidiary companies. That is as I understand it, but I really don't know.

Q. In the first place, I asked, if a saving was made in the cost of construction on account of buying a piece of real estate, and that was allowed, wouldn't that give all the benefit of the saving to the railroad and no part of it to the city, and you didn't answer that question. A. Of course, it is all discretionary with the Commissioners. I have no discretionary power on that, but I may say this, that if it cost two hundred and fifty thousand dollars to build a retaining wall there and we could for a hundred and fifty thousand dollars acquire real estate and use that for a sloping bank to take the place of the construction, there naturally would be a saving of a hundred thousand dollars in the cost of construction. Now, if they didn't acquire that real estate, they would have to spend two hundred and fifty thousand dollars.

Q. I understand all that. In that instance, they buy for a hundred and fifty thousand dollars some additional real estate which

dispenses with the contsruction of a retaining wall which would cost two hundred and fifty thousand. Now, if you allowed for the saving in construction, which was one hundred thousand dollars, you would be giving that saving all to the railroad? A. No.

Q. Why not? A. Because you would be paying a hundred and fifty thousand dollars for property that was probably worth fifty thousand dollars, but you would have a net saving of hundred thousand at the end.

Q. But, you say to take into consideration in the value of this real estate the saving in cost of construction. Now, if you do take that into consideration and add it to the price of the real estate, then the railroad would get all of the benefit of it? A. No, I don't see it that way, Mr. Chairman. In my opinion, the value of the property was fifty thousand dollars; but if they paid one hundred and fifty thousand dollars and there was a saving in cost of construction of two hundred thousand, it still left a net saving of a hundred thousand. As to whether that was justified or not, I don't know. I was not present at any meetings.

Q. If it were added, the railroad would get the benefit of such as was added, wouldn't it? A. You mean this subsidiary company?

Q. Whatever company was credited with that which was charged to construction. A. If you assume that the city could of course you are right. As to whether the city could do that or go into condemnation proceedings and acquire that for less, why not, I don't know.

Q. You don't answer my question at all. A. I am trying to.

Q. Let us assume you take a hundred and fifty thousand dollars worth of real estate. A. Yes.

Q. Now you give them credit for that value of the real estate. You said that there was talk of taking into consideration, in addition to a real estate viewpoint, the saving in cost of construction, which would be another hundred thousand dollars. A. Two hundred thousand dollars.

Q. All right. If you did take that into consideration, you would add that two hundred thousand dollars to the real estate value in charging to construction, wouldn't you? A. If you took the whole amount into consideration, but they divided it in half

Q. In which event, the railroad would get the benefit of the whole amount? A. The subsidiary company would.

Q. They would get the benefit of the saving and the city wouldn't get it. It is obvious enough. A. I assume it was a sort of a split of "fifty-fifty."

Senator Towner.— The question was asked from whom the property was acquired. You didn't answer that. A. Yes, I said from various owners.

Senator Towner.— Do you know from whom? A. Yes.

Q. Who were they? A. I don't know whether I have the list here or not. (Finds list and hands to Senator Towner.)

Senator Thompson.— Then, in this particular case you fixed the value of the property at fifty thousand dollars from the real estate point of view? A. Yes.

Q. The Commission "put it over" at a hundred and fifty thousand dollars? A. They recommended the payment of that amount.

Q. And that other hundred thousand dollars was added because of the fact that the railroad had saved in construction cost that sum by reason of having bought this particular piece of real estate? A. No, the city saved in construction. The city had to build that wall.

Q. Well, the wall never was built, was it? A. No.

Q. It didn't ever have to be built because you bought this real estate? A. Exactly.

Q. And because of buying this real estate, there was a wall which would have had to be built before you bought it, and therefor the Commission allowed an extra one hundred thousand dollars? A. As to whether the Commission allowed it on that ground, I have no knowledge. I wasn't present. I have never attended a meeting of the Commission, except in formal meetings where I am cross-examined. I don't know what was in the minds of the Commissioners at that time.

Q. Did you ever hear any other excuse than that for the addition of the hundred thousand dollars? A. I have never heard any excuse for it, except that I assumed that that was an element that they considered.

Q. That, because a retaining wall could have been built before they acquired the real estate and never was afterwards, for that reason a hundred thousand dollars was added? That would be a hundred thousand dollars that the railroad never did pay out and never would be called upon to pay out. Isn't that true? A. The city would build the wall. It is a hundred thousand dollars the city would never be called upon to pay.

Q. Well, nobody ever would be called upon to pay it. A. If the wall were built and this real estate not acquired, then it would have to be paid.

Q. But they don't intend to build it? A. No.

Q. Do you know who is President of that Rapid Transit Company? A. I really don't know. I think Colonel Williams is.

(Mr. Moss resumes examination of the witness.)

Mr. Moss.— Shall we take the next one? A. On a report dated April 28, 1915, to Mr. Whitney, Secretary:

> "I transmit herewith without my approval proposed purchase by the New York Municipal Railway Corporation from the Nassau Electric Railroad Company, for the sum of twelve thousand one hundred twenty-eight dollars property located on the easterly side of Seventh Avenue, thirty feet southerly from the corner of Thirty-eighth Street, being a hundred and seventy feet four inches on Seventh Avenue and three hundred and fifty feet in depth, plot irregular, in the Borough of Brooklyn.
>
> "I am of the opinion that the figure of twelve thousand one hundred and twenty-eight dollars is excessive and that seventy-five hundred is a fair basis of settlement as between the New York Municipal Railway Corporation and the Nassau Electric Railroad Company. (Signed by me.)"

Q. What was the result of that? A. They refused to accept the $7,500, and, as I understand it, are going to acquire it in condemnation proceedings.

Q. Was the Nassau Company another of the subsidiary companies? A. Yes, sir.

Q. With the same President, Colonel Williams? A. I so understand it.

Q. What is the next one? A. There was on just prior to that last one. I will quote that now. That was in March, 1915.

Q. While the witness is looking, I want to say that the paper which he handed down gives the names of persons from whom the lands were bought. The assessed valuation of the entire property is $54,320, and the purchase price at which the railroad bought from the individual owners was $163,000. The assessed value was $54,000, and the purchase price $163,000, so the railroad company that was handing it over was buying on that basis. A. Of course, in addition to that, there was interest on the purchases, examination of title and other expenses in connection with all of those. Then, they hadn't completed all of the purchases there.

The next transaction was embodied in a report of March 11, 1915, and in March 24, 1915, to Mr. Whitney, Secretary. It was in relation to a proposed agreement and lease for a hundred years between the Nassau Electric Railroad and the New York Municipal Railway Corporation for a right-of- way and terminal between Avenue Y and Stilwell Avenue, to a point about two hundred feet north of Surf Avenue and Stilwell Avenue, Coney Island. There are about four pages in these reports, and I don't think there is any particular conclusion except that I take issue with them. This appears in the report of March 11, 1915:

> "The following is a brief analysis of the proposed lease:
>
> "The payment of $300,605, as proposed in the contract, is arrived at by the New York Municipal Railway Corporation in the consideration of two elements, namely right-of-way, or real estate, at $100,000, which figure, in my opinion, is excessive. The sum of $200,505, making a total sum of $300,605, is an allowance made to the Nassau Electric Railroad for physical properties, such as railroad tracks and other improvements now existing and in use on the right-of-way proposed to be leased; also for the construction on Stilwell Avenue from Avenue Y to Surf Avenue, a street surface trolley railroad, complete equipment including a new bridge, in addition to the cost of pavement on Stilwell Avenue be-

tween the tracks and two feet on each side. Also the sum of $30,000 is charged for future re-paving of the street.

"I find upon investigation that the detail figures submitted by the New York Municipal Railway Corporation as being the estimated value of the present improvement and the cost of the new construction, making a total of $200,605, are considerably over estimated. I am also of the opinion that some of these construction items should be eliminated from the calculations, and more especially the construction cost of the surface trolley line at Stilwell Aenue for the Nassau Eelectric Railroad, which was estimated by the New York Municipal Railway Corporation at about $132,000. That it is the intention of the Nassau Electric Railroad Company to operate surface cars on Stilwell Avenue in any event is evidenced by the fact that it has already laid railroad tracks on Stilwell Avenue between the points Avenue Y and the New York and Coney Island Railroad Company's right-of-way, and has also entered into an agreement with the City of New York in connection with street opening proceedings on Stilwell Avenue for the operation of surface trolley cars on Stilwell Avenue between Avenue Y and Surf Avenue, and connecting Stilwell Avenue trolley tracks with Surf Avenue trolley tracks.

"The contract between the New York Municipal Railway Corporation and the Nassau Electric Company provides that the New York Municipal Railway Corporation shall pay any and all taxes and assessments on the land leased. The Nassau Electric Railroad Company reserves certain surface rights and should therefore be obligated to pay a part of such taxes.

"With reference to assessments, the Nassau Electric Railroad Company stipulates that the Nassau Electric Railroad Company reserves the right to claim damages for certain property lying between the lines of the proposed Stilwell Avenue, which property is part of the property included within the lease. It is practically certain that there will be an assessment of benefits resulting from the opening of Stilwell Avenue and should the Nassau Electric Railroad Company recover damages, the assessments on the property

leased will be greater. It seems to me that if the Nassau Electric Railroad Company recovers an award for property included in the lease, a certain portion of the assessment should be borne by the Nassau Electric Railroad Company."

That is just a brief summary. The other report on that was in March 24, 1915:

"Pursuant to the request of Chairman McCall for a supplementary report with respect to the above contract, that is, the proposed lease for a hundred years between the Nassau Electric Railroad and the New York Municipal Railway Corporation, after consultation with Mr. Turner to give special consideration to the $12,000 annual saving, to which, however, Colonel T. S. Williams called attention in his letters to the Commission dated December 2, 1914, should the above proposed contract receive the approval of the Commission, I submit the following:

"This element, amounting to $12,000 annual rental, which is paid by the Sea Beach Railroad to the Nassau Electric Railroad, has received my careful consideration and was taken into account before making my report to you on this matter.

"After giving further consideration to this matter, and having been in formal conferences with Mr. Turner, Mr. Grist and Mr. Doad, of the Engineering Department, I am of the opinion that the city should build its own structure on Stilwell Avenue, together with the required terminal facilities.

"I desire further to state that in the informal conferences it was practically agreed that the entire Coney Island project, including this terminal of the Broadway Fourth Avenue Line from Avenue Y to Coney Island should be submitted by the New York Municipal Railway Corporation and receive consideration as a whole instead of in separate parts as it is now being presented. I am of the opinion that, considering all the facts and elements entering into this proposition as a whole, better analysis could be made and a more satisfactory conclusion reached."

Under cross-examination, I recommended that they construct their own structure on Stilwell Avenue, in view of the cost and the different elements that they wanted considered in the lease.

Q. What was the company that wanted to make the lease? A. The Nassau.

Q. Is that another subsidiary company? A. Yes.

Q. Same Presidents, as far as you know? A. I think so, as far as I know.

Q. How long was that lease to be? A. A hundred years.

Q. How long a stretch of property was this? What was the length of it? A. I think about a mile.

Q. The proposition was that the Nassau was going to lease about a mile for a hundred years to the Municipal Railroad at the large rental that you have mentioned? A. Yes, sir.

Q. Why did you come to the conclusion that the city ought to build its own road there and not tie up for a hundred years to this subsidiary company? A. Under the dual system contracts, the New York Municipal will either furnish a right-of-way at the end of Stilwell Avenue, where the city terminates at that point, or the city will construct its own line to Coney Island over such right-of-way as they may see fit to take. Stilwell Avenue is legally open so as to pave the way in case the city wanted to build. If the city built its own structure, for instance, down Stilwell Avenue, they would have to advance the moneey for construction. If the New York and Municipal Railway furnished the right-of-way, the New York Municipal would advance the money and it would simply be an interest charge, the same as any other acquisition or construction. So, my recommendation was that the city build its own line down to Coney Island at that point, on account of the terms of this lease that they submitted.

Q. What did you consider in that lease to be burdensome upon the city? A. A number of things. As a whole, you might say. They proposed to charge a much higher figure for the lan dand for the right-of-way there than what I thought it was worth, and then they considered there was consequential damage for different elements, such as building a new trolley line and other things that I thought had no place in it. I thought it was best for the city as a whole to build its own line, but the Commissioners thought contrary.

The way the New York Municipal proposed to furnish that right-of-way was by a lease from the subsidiary company which they charged against construction.

Q. Is that so? A. That is evident here.

Q. The result of it then is that the Municipal has its way? A. Well, I don't say that.

Q. With the Commissioners I mean. A. Well, I don't say that.

Q. What change was there made in the proposition? A. There were some reductions made here, but I didn't follow it to a close.

Q. Any serious reduction? A. Really, I didn't follow it to a close. I put a report in. If they cross-examined me, all right. It didn't concern me what they did finally.

Q. Has that matter been closed? A. Yes.

Q. When? A. The lease was approved July 20, 1915, with quite a few changes in it, interlineations, etc.

(Questions by Senator Thompson.)

Q. What was the vote on it? A. Really, I don't know.

Q. What was the difference really in cost to the city between the approval of this hundred year lease and your suggestion? A. Really, I don't know. I couldn't tell you the terms that they finally approved, because it was a matter of negotiation between the Commissioners and I had nothing to do with that question.

Q. Who carried that on? A. The Commissioners. There were different conferences. I believe there are some minutes here with reference to those conferences.

Q. We want to know more about this as soon as we can. A. I didn't follow that. I wasn't interested in it.

Q. How much was the rental for that hundred years? Was it $3,000, or $300,000? A. Just a moment — I don't want to guess on this. This lease called for the payment of $100 annually, and the lump sum immediately of $300,605.

Q. You get $300,000 of the rent in advance, and they get $100 a year after that? A. Yes, sir.

Q. That was put through? A. I don't know. I don't think that they paid that much. What they really paid I don't know. I didn't follow it.

Q. Did you ever hear? A. Maybe I did, but I paid little attention to it. What was the use as far as I am concerned? My report was in, they cross-examined me.

Q. How much of a department do you have? A. One in the department.

Q. Won't you have a stenographer? A. I have the use of a stenographer there, but not the exclusive use. I have the use of clerks, if I want to call for them, but I am alone.

Q. Who do you depend upon for assistance? A. Usually Mr. Skimore.

Q. Who provides that? A. The Secretary.

Q. Provides all the assistance or office room you want? A. Yes.

Q. Did you resign? A. I did.

Q. When? A. May 6, 1915.

Q. Did they hire you back again? A. They did.

Q. They kept you just the same? A. Yes.

Q. Increased you salary? A. Yes.

Q. Still they don't pay any attention to what you recommend? A. I don't say that. They do freqeuently.

Q. They use what you recommend as a basis to make it higher? A. I don't think so. I think that the Commissioners as a whole are inclined to be honest. They may consider elements that I haven't taken into consideration that it might be well to take into consideration. That is up to them. I am not present at these meetings nor all the conferences.

Q. You make your judgment on what the value of the real estate is that they take over. You go through it very carefully and give what you think is the reasonable value of that real estate? A. Yes.

Q. And then they go on and take that report and every time they change it, they increase it? A. No, I wouldn't say that.

Q. Did they ever decrease any one of your recommendations that you can remember? A. No.

Mr. Moss.—Why did you resign? A. Simply because I thought that I could make more money and have it easier in private life, that is all.

Senator Towner.— Did you resign before your recommendations were not agreed to? A. Oh, no. So far as the recommendations are concerned, a real estate appraiser becomes callous to that, as to whether they adopt this conclusions or not. He knows he is right, and that is all there is to it.

Senator Thompson.—How many people are there over there in that administration that are callous, or don't you know about any of the rest of them? A. I don't think that the mere fact that they don't agree with me means that they are not justified in not agreeing with me, because I take it from one slant, the real estate slant.

Mr. Moss:.— I will let you know, Mr. Cedarstrom, when well take the balance of those matters. There are several more, aren't there? A. Yes.

Senator Thompson.— When we were in session a week ago, President Shonts, of the Interborough, asked to be excused, and the statement was made by the Committee that we didn't expect to meet until Friday of this week, which would be a public hearing. He wouldn't be needed and we probably would meet on Saturday. Acting upon that, it appears that he went to Atlantic City on Thursday.

We desired him to appear today, and one of our employees notified Mr. Pepperman of that on Thursday, and we understood that he would appear. Last night, the attention of the Chairman was called to the fact that Mr. Shonts had practically been excused for the week, which is admitted, but he said he would come back today if he wasn't sick. But, I am advised this morning that he didn't come back and the presumption is that he is sick.

We have requested that Mr. Shonts appear here Monday morning, and there is no agreement on the part of the Committee or suggestion that he won't be needed Monday. We have been awaiting a telephone communication, but whether he is out on the boardwalk and can't be found I don't know, for they haven't been able to get in communication with him. However, we will want and expect Mr. Shonts to appear Monday morning, and will adjourn, for that reason, until half past ten Monday morning.

Adjournment.

MARCH 20, 1916.

Examination by Mr. Moss:

JOHN PURROY MITCHEL, being duly sworn, testified as follows:

Q. I want to ask if you ever saw this paper, being a letter dated March 22, 1910, not signed, but typewritten on the letter paper of Theodore P. Shonts and addressed to William R. Willcox. It is apparently a proposition for subway work? A. I want to look at it carefully, because it goes a long time back.

Q. Yes, please do that. A. I should say in answer to your question that to the best of my recollection I never say this paper. I notice in some of the suggested terms propositions so familiar to me that I am inclined to think that the substance of this was discussed, but the letter itself, I believe I never saw.

Q. Did you at or about the time of the date know of that proposition? A. Mr. Moss, I really could not answer that question positively. My recollection is that I did not as searly as the date of this letter, or approximately that.

Q. Do you recollect about how long after that date you knew of it? A. Can you tell me the date on which the Interborough submitted the offer which was the first so-called — well, I wouldn't know how to term it — but, the offer as to which a joint report was submitted by myself and the Comptroller?

Comptroller Prendergast.— December 5, 1910. A. I think it was probably shortly before that time, but I am drawing upon my recollection, and it is not definite.

Q. I have here a report signed by Mr. Prendergast and yourself, dated January 5, 1911, which has reference to the proposition that Mr. Prendergast has freshened your recollection upon, and it contains this clause on page 8:

> "From information furnished by the Chairman of the Commission, it is the understanding of your committee that these negotiations between the President of the Interborough Company and the Chairman of the Commission, looking to

the construction of Interborough extensions with Interborough money continued until early in the spring of 1910.

"According to the Chairman (that means Mr. Willcox), I assume his mind and the mind of the President of the Interborough had met upon all the essential features of the plan and details remaining to be adjusted."

That would appear, Mr. Mayor, to relate to just such a paper as you have in your hand there?

A. It is quite likely it did, but my recollection is that the information was derived from the conferences with the Chairman of the Commission.

Q. And those conferences were nearer the date of your report? A. Mr. Moss, they may have extended over, and did extend, as a matter of fact, over the entire period of discussion which took place between what was then the Transit Committee of the Board of Estimate, consisting of the Mayor, the Comptroller and myself, and the Public Service Comission. Those conferences began very shortly after we asumed office, but at what particular point in those conferences these negotiations, or these proposals of the Interborough were communicated to us by the members of the Public Service Commission, or by the Chairman of the Commission, I am unable to state. My recollection is, and it is very vague, that it was sometime in the fall of the year when we went into those matters. When you are asking me on so important a question as this, I feel that I ought to direct your attention to the fact that it is possible that that particular proposition was drawn to my attention earlier. I could not deny that it had been, although my recollection is that those facts were discussed in the fall.

Senator Thompson.— Just prior to December 5? A. I wouldn't say just prior; I think probably sometime before that, Senator.

Q. Well, here, Mr. Mayor, in this paper is a formulated plan which looks to the use of Interborough money entirely. If you knew that a formulated plan had been devised and reduced to type, you probably would remember it, wouldn't you? A. I think I would have had a copy.

Q. Did you ever have a copy of this? A. My recollection is that I never had a copy.

Q. Isn't it your best recollection that such a plan as this one which had been formulated and typed, didn't come to your knowledge until the fall and pretty near to December? A. My best recollection is that my knowledge at all times was derived from what the Chairman told me, and that I never saw a formulated proposition. I am not sure that I ever knew that a proposition had been formulated on paper, although I may have been told that.

Q. You have no recollection of the Chairman having shown you such a paper as this? A. I have no recollection of it, and yet if the Chairman should state from his positive recollection that he had done so, I would not be in a position to say that I had not seen it. I would accept his word as correct on that question, because my own recollection is at fault. I think I can explain that in this way — I was not interested in the propositions to build extensions with Interborough money. I didn't believe in it. I didn't understand at that time that anybody in the Commission or in the Board of Estimate did believe in it. I myself stood for the proposition of subway building with city money.

Senator Thompson.— And it was to be owned by the city? A. Yes, with city funds.

Senator Thompson.— I say, you wanted the city to own it besides? A. Well, of course.

It is quite possible that I might have been told that such a proposition had been made and paid very little attention to it for that reason.

Q. Don't you think, on the other hand, that if you had known there was such a proposition as this in writing that your interest in the subject would have led you to have a copy prepared for you? A. As I said, Mr. Moss, I would have expected to find a copy of every important paper relating to the subway matter in my files.

Q. Mr. Mayor, you always and at all times stood upon your pre-election position? A. I understood that I was standing on that position.

Q. You never changed your vote in any way, did you? So far as your best judgment goes, your vote was always consistent with your pre-election position? A. That is quite true. That is,

I voted the same way on all these propositions, guided by what I conceived to be the same principle. It is true that in the conferences immediately preceding my attack of typhoid by about two or three days, when we were discussing the nine and nine, eight and a half eight and a half proposition, at one of those conferences, I said that if the Company came to an eight and a quarter basis that I would agree.

When I went home that evening with the assistants of my office and reviewed the schedules and saw where, from our point of view, that would bring the matter out, I notified all concerned the next morning that I had made a mistake in saying that I would agree to that proposition. That is the only instance in the course of the entire subway discussion where my judgment wavered on the question.

Q. And, Mr. Mayor, if my memory is correct, when the matter was finally closed, your vote was the only vote against it? A. My recollection is that there was none other cast.

Q. You voted three, being your statutory power? A. That is true.

Senator Thompson.— You were President of the Board of Aldermen at that time? A. Yes.

Senator Thompson.— And, as I understand you, from your recollection, you never did see that paper or a copy of it? A. I have no recollection today of ever having seen that paper or a copy of it, but, Senator, in the course of four years of one of the most active controversies that has ever been conducted in the life of the city, I might say that to you, and yet it might be a fact that Mr. Willcox had shown me that paper and there would be no present recollection of it. However, I have today no recollection of ever having seen that paper.

Senator Thompson.— And, whatever your knowledge was in relation to it was by conversations with Mr. Willcox? A. That is the best of my recollection.

Senator Thompson.— And that those conversations were had in the fall, which would be sometime after September, 1910? A. That is more a guess than a recollection, but as far as I have any

recollection of the matter, I should say that the conferences were in the fall, when those features were discussed. You see, when we began, as I remember it, the conferences were held in the offices of the Public Service Commission, the Mayor, the Comptroller and myself attending, and I recollect that the Commission in the early conferences outlined in general terms negotiations that had been had between them and the Interborough, that various offers had been made or suggestions had been made, but that they all contemplated building with Interborough money, as I recollect. I had always believed in the other principle of construction, building with city money, and we gave practically no attention to those offers in those early conferences at all.

Senator Thompson.— There is a little difference there. Everybody seems to have been willing to build with city money. The only controversy seemed to be as to who owned it after you got it built. A. That was not a fact in the early days of the negotiations, because some of us believed in building entirely with city money, and there had been some opinion in favor of permitting the Company to build with its money, and then an opinion developed later as to the partnership arrangement, building with the money of each, but in those early days of the conferences, it is the best of my recollection that we spent practically no time on that. We moved right on from a bare statement of the facts that such negotiations had taken place to a consideration of the routes of the Tri-Borough. We got right down to that and spent nearly all our time working on those routes, lay-outs and calculation of available funds. Then the conferences marked time for a while while we were waiting for the constitutional amendment in order to release funds, so that we got along to the fall of the year before, as I recollect, an active discussion of proposals was resumed.

Q. Did Mr. Wilcox tell you anything more in these conferences except about the particular offer contained in this letter? A. My recollection is that Mr. Willcox was very frank and complete in what he told us about the situation, but I couldn't answer your question more specifically than that. I noticed in going through that paper the proposition to run up Madison Avenue —

Senator Thompson.— Your recollection is probably correctly

stated in that report that Mr. Moss calls attention to as early as January, 1911? A. Everything stated in that report was prepared with the greatest care and is accurate.

Q. You notice that that doesn't refer to any formulated proposition at all. It refers to discussions and conferences.

Senator Thompson.— That is all right.

COMPTROLLER WILLIAM A. PRENDERGAST, being duly sworn, testified as follows:

Q. This was after the passage of the amendment? A. The extension of credit by the amendment was in the spring, the election of 1909.

Mayor Mitchel.— But, the Enabling Act under that had to be passed, and that was done at the spring session of the legislature. That wasn't operative until we had the Enabling Act.

Senator Thompson.— The Enabling Act passed the legislature in 1909?

Mayor Mitchell.— By popular vote.

Senator Thompson.— The enabling act was passed by the legislature of 1909. They generally adjourn in the Spring sometime. A. Oh, yes, and submit it in the fall of that year. Then, the legislature of 1910 passed the enabling act under the amendment. That enabling act was necessary in order to permit the Appellate Division to act in exemption of the bond, because there was a great hurry in getting that ready.

(Mr. Moss continues with the examination of the witness.)

Q. Mr. Comptroller, I want to ask you the same question that I asked the Mayor, and I hand you that same letter that I showed the Mayor. A. I never saw that document before.

Q. Did you ever see a copy of it to your knowledge? A. I never saw a copy of that document.

Q. Were its terms brought to your attention at any time? A. Not in detail, no.

Q. When was any reference made to it for the first time that

you remember? A. In the Spring of 1910, by Mr. William R. Willcox, Chairman of the Public Service Commission.

Q. What did he say? A. Mr. Willcox, during that period, I should say during the months of February and March, had informed me at different times of negotiations he was carrying on with President Shonts of the Interborough Rapid Company, and as he would meet me from time to time, would say that he had had further conferences, and he hoped that they were going to come to some agreement, possibly, upon the question of further subway building. These conversations between him and me proceeded during the spring until sometime, I think it was in the month of March; late in the month of March, I met Mr. Willcox at the City Lunch Club one day, not by appointment but happened to be there at luncheon and he happened to be there. He told me that the negotiations that he had been carrying on with President Shonts were off.

Senator Thompson.— Do you remember the date of that? A. It was sometime in the month of March, 1910. I should say late in that month.

Senator Thompson.— Did he tell you those negotiations had been formulated into a letter? A. I don't recall that he did.

Senator Thompson.— Can you say whether he did or not? A. I would not want to say, because I am not sure of it.

Senator Thompson.— You have no recollection that he did, have you? A. I would not say that Mr. Willcox did not tell me that there had been some memoranda submitted.

Senator Thompson.— Have you any recollection that he did tell you so? A. I would not want to say that I have any recollection that he did tell me so.

Senator Thompson.— Did you ever have a copy of any such document or of any terms that had been arrived at or discussed between Mr. Wilcox and Mr. Shonts? A. No.

Senator Thompson.— When you and the Mayor joined in this report of January 5, 1911, being the majority report of the Transit Committee to the Board of Estimate and Apportionment, did

you then know that such a document had been formulated? A. I don't believe I did.

Mr. Moss.— Then that answers the questions, Mr. Chairman.

(Testimony of Theodore P. Shonts, Mr. Moss conducting the examination.)

Mr. Moss.— Mr. Shonts, I am going to hand you the same paper, the letter of March 22, 1910. Where was that prepared? A. At my office.

Q. Under your supervision? A. Yes.

Q. Who dictated it? A. I imagine Mr. Rogers.

Q. Well, can't you state who dictated it without imagining? A. I think so.

Q. Was it Mr. Rogers? A. I suppose it was Mr. Rogers.

Q. I don't like suppositions. Please get your mind onto the transaction. You have had some time to think about it. I want to know who dictated it. A. My best impression was that is was Mr. Rogers.

Q. Can't you give better than an impression? A. No, because Mr. Rogers usually did this work for me on the basis that I would outline, and I suppose he did in this instance. I have talked with Mr. Rogers and that is his recollection also. I talked with him this morning.

Q. Was Mr. Rogers present throughout the preparation of that document, the physical preparation of that document? A. Well, if he dictated it, of course he was present.

Q. I didn't say "if." Was he present throughout the operation? A. My best answer is that I think Mr. Rogers dictated it. Of course, he was present if he dictated it.

Q. Was he present? I am leaving out the matter of dictation now. Was he present in the preparation of that document? A. I think Mr. Rogers dictated this memorandum on the basis of a memorandum that I had dictated and given him. That is his recollection this morning.

Q. Whether he dictated it or not, was he present when this paper was prepared? A. I would say yes.

Q. Who else was present? A. I don't remember.

Q. Try to think. A. I don't think I can be more definite than I have been with you, Mr. Moss. I have no definite recollection about any of these various memoranda that were prepared as to who sat by or who did the work or who was the stenographer or any of thoes things.

Q. I didn't ask you about that, Mr. Shonts. I want the minds that worked together to get that document out. Mr. Rogers you say was there. He was the lawyer. You must have had other brains besides the lawyer's. A. I think I will cover your point in my way. What our usual practise was —

Q. I don't case about the usual practise. I want something about that document there. A. I can't tell you about this thing definitely.

Q. Who did you confer with in preparing the data for that document? A. Mr. Hedley and some in our engineering department.

Q. What members of your engineering department? A. Usually Mr. Pegram.

Q. Was it Mr. Pegram? A. Yes.

Q. Was there a time when you and Hedley and Pegram and Rogers were together with some stenographer? A. No, not necessarily, and I don't recollect that. They would make their reports to me and I would take their reports as the basis of my memoranda to Rogers.

Senator Thompson.— Were those reports in writing? A. Some of them; most of them.

Senator Thompson.— Are they in the files now? A. I think some of them are.

Q. You say you had prepared a memorandum from which this was formulated. Where is that memorandum? A. I have it here, I think.

Q. You hand me a memorandum, and it is marked in pencil "memorandum," dated February 21, 1910. Is this the document you referred to? A. Yes.

Q. This is so short, Mr. Chairman, I would like to read it to you. It is dated February 21, 1910:

"(Exhibit No. 1.)

"It is proposed to build certain extensions under Contract No. 1 (excepting that the method of construction will vary from the conditions as contained in Contract No. 1), with the following changes:

"1. The length of the present lease will be changed from 50-25 years, to, say, 55 years from the date of completion of the new extensions; the lease of the Brooklyn extension from present length of time 40-55 years from the date of completion of the new extensions, and the new extension lease to be 55 years from the date of completion.

"2. It is proposed to divide with the city the surplus eranings arising from the new extensions which will be arrived at by the ticket sales from stations on the lines of the new extensions, after deducting from earnings:

"(a) Cost of administration, to be arrived at by prorating the mileage of the new extensions, with the wheelage on the whole system; (b) Cost of operation, to be arrived at by prorating the wheelage on the new extensions with the wheelage on the whole system; (c) Maintenance charges, which will be the cost of maintenance expended on the structures of the new extensions, including repairs, renewals and depreciation; and maintenance repairs and renewals of equipment, including depreciation.

"(d) All real estate taxes and assessments growing out of the new extensions and the State tax on gross earnings thereof.

"(e) After deducting 1 per cent. sinking fund to amortize the cost of construction, except equipment — the equipment to be bought by the city on expiration of lease, the same as provided for in contract No. 1 of the present subway.

"(f) After deducting 6 per cent. upon the cost of extensions and equipment, said cost to include 15 per cent. added to cover superintendence during the period of construction and discount of bonds.

"(g) After making the above described deductions, the balance to be divided 50 per cent. to the city and 50 per cent. to the Interborough.

"(h) In case in any year the gross receipts are not sufficient to pay in full the items above stated to be deducted, then the deficit shall be paid out of the gross receipts of the subsequent year or years.

"3. The company shall not be compelled to make expenditures for improvements or additions on the new extensions which will result in reducing this company's proportion of the surplus to an unreasonably small amount.

"4. This company will operate any new subways or extensions thereof constructed by the city which will insure the company receiving a profit from operation."

Were all of these provisions, to the best of your judgment, incorporated in that document dated March 22? A. Yes.

Q. How was that prepared, the document of February 21? A. Those provisions were what I understood to be the provisions that were satisfactory to Chairman Willcox.

Q. You had had numerous conversations with Mr. Willcox, before that was formulated, February 21? A. Yes.

Q. Did you have any conversations with Mr. Willcox between February 21 and March 22? A. I can't remember that.

Q. Have you any recollection of any conversations between the time of that document and this document which would tend to change the terms? A. I don't remember.

Q. You don't remrmber of any changes, do you? A. I don't remember of any conversations or any changes.

Q. Well, your intention in the formulation of the document dated March 22 was to formulate what you and Mr. Willcox had arrived at, was it? A. No, not exactly. It was to formulate what I understood to be what Mr. Wilcox was satisfied with, if we would formulate it in a proposition. My recollection is that I gave Mr. Rogers that memomrandum, which he used as the basis of this first draft. I would say that we can find no copy of this memorandum in our files, this one of March 22. I talked to Mr. Rogers this morning. His recollection is that he used that as a basis and formulated this document and gave it to me. I left it with Chairman Willcox. Mr. Rogers took this copy and proceeded, after we talked it over, to make another revise which is in our files, and which is of March 23rd.

Then, between March 23 and March 28, our minds had developed along certain lines that caused quite a radical difference and we formulated a third revise of March 28, which is in our files.

Q. Were there any copies of this March 22 made? A. Not in our files.

Q. Were there any made? A. I don't know. Mr. Rogers' impression is that he had one copy and that he used that in preparing his revise of March 23 and that his copy of March 22 was lost or destroyed.

Q. Have you looked through your personal files for a duplicate of this document of March 22? A. I would never put those things in my personal files.

Senator Thompson.— What do you mean by that? What do you mean when you say you wouldn't put them in your personal files? A. My personal files are my bills on personal matters.

Senator Thompson.— You mean it would go into the Interborough general file? A. They have looked for it and say they can't find it.

Q. Have you had a search made? A. When I left last week, I ordered that to be done and they tell me they were not able to find a copy in our files.

Q. After this document of March 22, 1910, had been typewritten into the shape which we have here, what did you do with it? A. I left it with Chairman Willcox.

Q. Did you take it to Mr. Willcox? A. Yes.

Q. Where did you take it to? A. I imagine at his house.

Q. Can't you remember? A. No, I can't remember.

Q. Did you ever have this document of March 22 in Mr. Willcox's house? A. That is the best of my recollection, but I am not sure. It may have been the office.

Senator Thompson.— Did you mail it? A. No.

Q. You took it personally, didn't you? A. Yes, that is my recollection.

Q. Did you ever discuss this document which I hold in my hands and which we have been talking about with Mr. Willcox

personally? A. I imagine I discussed it with him when I handed it to him, but I don't remember distinctly.

Q. What memory have you? I don't like you to imagine. That doesn't count for much. A. I haven't distinct recollection of discussing it with Mr. Willcox.

Q. This paper contains so interlineations, which I think it has been declared are in the handwriting of Mr. Willcox. For instance, that (pointing). A. I don't know whose handwriting it is. It isn't mine.

Q. Where were those interlineations written? A. They must have been written when we were together. Now, here is an interlineation which looks to be in my handwriting. "Or through some other routes as may be reasonable"— that looks like my handwriting.

Q. Where were you then? A. My recollection is at his house, but I am not certain. It may have been at his office.

Q. In the daytime or in the night-time? A. If it was in his office, it would be in the daytime, and if at his house it would be in the evening.

Q. Which was it? A. I don't know. I have no distinct recollection.

Q. What rceollection have you? A. I have no distinct recollection.

Q. I will show you that interlineation. Is that in your handwriting? A. No.

Q. Isn't that in Mr. Willcox's handwriting? A. I am not familiar enough with it to say.

Q. Where was that interlineation put on it? A. I don't know.

Q. Did you discuss that paper with Mr. Willcox in his house at any time? A. My recollection is that it was discussed; whether at his home or at his office, I have no recollection.

Q. Now, Mr. Shouts, does this revision of March 23, Exhibit No. 2 (See page) contain the interlineations which appear upon Exhibit of the date of March 22? A. I would have to look to see. Some are not changed at all. One place I find cut out that says "cut out," and others are changed not according to this, but in other ways.

Q. Then, some of the corrections or changes in the second docu-

ment compare with similar changes in the first? A. All I find is the omission of Paragraph "C" on one page. The rest are not the same.

Q. It isn't necessary to go any further than this. There are evidences between the two papers to the effect that some of the changes indicated on the first appear to be in the second.

Senator Thompson.— The lead pencil suggestions on the first document are incorporated in the second copy. A. In some cases.

Senator Thompson.— You will find that in most of the cases that is true, except in relation to the cutting out of the Steinway Tunnel proposition. That is in there and is cut out. There is enough here to indicate that the pencil changes of March 22 were used in the preparation of the memorandum of March 23.

Q. And, was the Steinway Tunnel proposition eliminated in the second paper?

Senator Thompson.— It wasn't eliminated. The March 22d paper provided in substance that the Steinway Tunnel should be taken over by the city and the Interborough should be paid by the city the cost that the Interborough had incurred up to that time. The letter of March 23rd cuts that out and in place thereof provides that the Interborough shall complete this Steinway Tunnel.

Q. I meant to eliminate it from the program of the city. Is there any change in the document of the 23d of March from that of March 22 with reference to the use of the Interborough's money? A. I imagine not from what my office told me.

Q. Well, you have it in your hands. It is the same thing, isn't it? A. I will have to read it. I haven't had time, you know. I just got back.

Q. We might as well get it straight on the record, even if it would take your time to look at it. I want to see if the financial plan is just the same with the exception of the Steinway Tunnel provision. A. Yes.

Q. Same thing? A. Yes.

Q. What did you do with this document of March 23? A. I don't find any record of having done anything with the exception

of making a further study of it, which resulted in another revise of March 28.

Q. Wasn't that shown to any Commissioner? A. Not that I know of.

Q. Have you no recollection at all of it having been shown to a Commissioner? A. No.

Q. Let us see the one of March 28 (Exhibit No. 3). How does this letter of March 28th differ from that of March 23d. Have you any recollection, or can you tell us in general? (For Exhibit No. 3 see Page .) A. The chief difference between the revised memorandum of March 28 and the memoranda of March 22 and 23 is that in March 28, the memorandum withdraws, for reasons stated on Pages 2 and 3 the Madison Avenue line altogether, and suggests in lieu thereof a lease for the operation of the Broadway Lexington Line instead, and at the same time calling attention to the fact that in the Interborough's judgment, the construction of so much of the Broadway Lexington Line which lies south of Forth-second Street was an unnecessary use of the city's money at that time, because, if the plan as outlined was carried on, it would mean an unbalanced system. That is to say, you would have south of Forty-second Street eight tracks with only four tracks north of Forty-second to feed them. The suggestion is made, therefore, that in view of that, the city would only build so much of this Broadway Lexington Avenue line as lay South of Forty-second Street at that time, and if the Interborough and the city could agree upon a proper basis for operation by the Interborough and subsequent events proved the necessity of adding the other lines later on, then the city could build the lines and the operating agreement would be extended.

Q. Was there any change in that document of March 28, in the financial arrangement, that is, as to who should provide the money? A. Not as to the other lines.

Q. The only change is with reference to the Lexington Avenue and Broadway line that you have just mentioned? A. The dropping out of the Madison Avenue line entirely and the substitution therefor a lease for the operation of the Broadway Lexington.

Q. What was done with that revision of March 28? A. I don't find in the records that anything was done with that.

Q. Is it your best recollection that that was not sent or delivered to anybody? A. I have no recollection about it at all.

Q. Is there any one else who would know better than you? A. I asked Mr. Rogers, I asked Mr. Gaynor, I asked Mr. Fischer about it, and they didn't recollect anything more than that. I am sorry I can't tell you, Mr. Counsel; I am guided by the notation on it.

Q. We have the letter of March 22, the letter of March 23 and the letter of March 28 all before you. Which of those letters was shown to Mr. Willcox? A. March 22.

Q. Is that the only one? A. Possibly March 23.

Q. Do you think March 23 was shown? A. The same notation is on that as the other one, Mr. Counsel.

Q. In view of that notation, do you believe that No. 2, that is, the 23d, was shown to Mr. Willcox? A. In view of that notation, I would say no.

Q. Was he told of it? A. I think I did.

Q. Did you tell him about both of those, the 23d and the 28th? A. Yes.

Q. You communicated to Mr. Willcox the substance of the 23d and the 28th? A. That is my recollection, yes, sir.

Q. What did you do, Mr. Shonts, to make out any working plan for that proposition? Anything? A. I don't quite catch your meaning.

Q. Did you make out a working plan for that proposition which is shown in the 23d and the 22d and the 28th? A. I don't know just what you mean by a working plan.

Q. Were there any figures made out? A. Yes, as I say, I think they were in the files.

Q. Produce any figures that were made. A. I find a statement here.

Q. Was that made by the auditor? A. Yes, on March 24.

Q. Summarize it. A. It is the estimated annual expenditures from 1911 to 1914 inclusive, of the proposed extensions and improvements and new subway south of Forthy-second Street, with interest charges resulting therefrom.

Q. Did the auditor prepare that under your directions? A. Yes.

Q. For what purpose? A. We were trying to see how far we could go, if at all, in furnishing private capital for what they called normal extensions of the subway.

Q. What is the date of that paper? A. March 24, 1910.

Q. March 24? A. Yes.

Q. You had that paper, then, in your possession on or about its date, March 24, did you? A. Iimagine so.

Q. In view of the paper which you have in your hand, you made the revised proposition of March 28? A. Yes, that is my recollection.

Q. You were taking it up seriously, weren't you? A. Yes, we were taking the matter up seriously. We regarded it as a very serious proposition.

Q. You weren't beating the air at all, were you? You believed you could do it, didn't you? A. Believed we could do what?

Q. What you proposed to do in the document of March 28. A. When we document of March 28, we believed we could, yes.

Q. You believed you could do what you proposed? A. Yes.

(Report of Auditor, dated March 24, 1910, is Exhibit No. 4. See page .)

(Exhibit No. 5 is presented, a letter from Mr. Hedley.)

Q. Those figures attached to Mr. Hedley's letter. Are they computations made by him, presumably? A. No.

Q. Who were they made by? A. They are my figures.

Q. Those are your figures? A. Yes.

Q. And what do they show? A. That is more than I know. I have been looking at them, but I don't know. I would have to study them.

Q. I think, Mr. Chairman, we will extend this in the record also. (Exhibit No. 5. See page .) It goes carefully into the matter of the Broadway Lexington Avenue route, and I think is restricted to that. It also discusses the elevated. This letter of Hedley's on the 25th is three days before the final revision of March 28. Was this proposition laid before your directors? A. No.

Q. Wasn't it discussed with them? A. Oh, yes, I always keep my directors advised of all negotiations that I have.

Q. You had a meeting of your Board of Directors on March 23, at 11:15, according to your Minute Book? A. Yes.

Q. That is the very day upon which the first revision was made and dated? A. Yes.

Q. Was the matter discussed in the Board of Directors? A. Yes, I have an idea it was.

Q. See if you can't make that more positive. A. I think it was because my attention was called to those minutes this morning. I read them and I see that the Board on that day authorized the Executive Committee to take such action in regard to their negotiations that might seem wise or to the interest of the company.

Q. Let me read those minutes into the record:

"A regular meeting of the Board of Directors of the Interborough Rapid Transit Company was held at the office of the Company, No. 165 Broadway, New York City, on Wednesday, March 23, 1910, at eleven o'clock A. M., pursuant to the notice given in accordance with the by-laws. The Chairman referred to a proposition of this Company for the construction of new subways made to the Public Service Commission in a letter dated June 30, 1909, and approved by this Board at a meeting held on that date, and a subsequent letter of September 22, 1909, modifying said proposition, and stated that he had been in almost continuous conferences with the Chairman of the Public Service Commission with a view to overcoming differences and more nearly meeting the desires of the Commission, that still further conferences were necessary, that it might become desirable to submit an amended proposition in writing and that delay could be avoided if the Executive Committee were empowered to prepare and submit to the Public Service Commission such a proposal.

"After discussion, it was, on motion duly made and seconded, resolved that authority be and hereby is conferred upon the executive committee of this Company to approve and submit to the Public Service Commission any amended

alternative or modified plan for the construction and operation of any new subways and elevated extensions which may appear to said Committee to be for the best interests of the Company.

"There being no further business, on motion duly made and seconded, the meeting adjourned.

"H. M. FISCHER."

Senator Thompson.— That was evidently a harmonious meeting? A. Yes.

Q. Wasn't there an inharmonious meeting that morning, or rather, wasn't there an *un*harmonius discussion that morning? A. I have no recollection of it.

Q. Wasn't there a discussion that morning which was not extended into the minutes? A. I have no recollection of it.

Q. When you made a report to the directors which led them to make these formal minutes, what did you tell them? A. I was in the habit —

Q. What did you tell them? A. I don't remember what I told them this particular morning.

Senator Thompson.— Get it as near as possible. Give us the substance of what you recollect. A. That morning I brought them down to date on any negotiations or important matters pending, and I no doubt brought them down to date in regard to the negotiations that I was conducting with Chairman Willcox.

Senator Thompson.— What you mean by bringing them down to date was that you told them about it? A. Everything down as far as the time of the metting.

Q. That included, then, this letter dated March 22? A. It would cover everything that was down to date.

Q. Did it? A. I don't know that I referred to March 22.

Q. Well, it covered all that you had done with this letter, whatever it was? A. That was the idea.

Q. If you had delivered that letter to anybody, it would cover that, wouldn't it? A. I should think so.

Q. Well, didn't it? A. I do not recollect.

Q. You wouldn't hold it back? A. No.

Senator Thompson.— If this letter was taken up and had been given to Mr. Willcox and was up at his house, why you told them that, of course, didn't you? A. The chances are that I did.

Q. (By Senator Thompson.) I don't care about the chances. That would be true, wouldn't it? If you didn't and you were on the Board of Directors, I would want to fire you. A. My Company might have done well if they had fired me long ago, but they didn't. About the only criticism one of our directors made with me always was that I took them too much into my confidence. I tried to keep them thoroughly posted in every important matter.

Q. (By Senator Thompson.) Then you did in this particular case? A. I suppose I did. I have no distinct recollection of this. This thing was going on for years every day, every week. I can't recollect every little detail.

Senator Thompson.— This was a pretty important matter, Mr. Shonts? A. They were all important matters. We don't deal with unimportant matters.

That resolution would indicate, Mr. Counsel, answering your question just intelligently as I can, that was the result of my telling them the situation with regard to my negotiations with Mr. Willcox.

Q. Did you tell them everything that you had done with this letter of March 22? A. To the best of my recollection, yes.

Q. Who comprised the Executive Committee? A. Mr. Berwind, Mr. Belmont, Mr. Freedman and Mr. Vanderbilt and myself.

Q. Who was Chairman of it? A. I am Chairman of the Executive Committee.

Q. Then that practically put the whole matter into your hands, you being Chairman of the Executive Committee? A. I wouldn't say that. It put it into the hands of the Execuitve Committee. They are not figureheads at all, and, more than that, I always want the advice of my people.

Q. Did you take the Executive Committee in with you in the preparation of these two revisions? A. They always knew what I was doing.

Q. Did you take them in on those two documents? A. Yes, and I think that is the reason we never sent either one of them.

Q. They knew all about it? A. They thought it was time to drop out.

Q. Do you remember the occasion when you were at Mr. Willcox's house up to two o'clock in the morning? A. We were at Willcox's house so often at two o'clock in the morning that I can't remember which you have reference to. That wasn't in reference to this, however. That was later on.

Q. During March, 1910, do you remember anything like that? Now, think — think — an occasion in March, 1910. A. There may have been; I don't remember.

Q. Now, think, please. And you were not the only representative of the Interborough. There were others there with you. Do you remember it now? A. No.

Q. Do you remember an occasion when you were present at the house of Mr. Willcox in March, 1910, with other persons representing the Interborough besides you, when you were separated and left at two o'clock in the morning, having concluded and agreed upon a plan? A. No.

Q. Did you not have at Mr. Willcox's house that document of March 22, you being accompanied by other persons connected with the Interborough Railroad Company? Didn't you discuss it? Wasn't it amended then and there in certain particulars, and didn't you leave with an agreement between you that that plan would be carried out? A. No.

Q. Well, what part of my question isn't so, how much of it isn't so? A. That we agreed on any plan.

Q. Do you remember the occasion? A. I wouldn't say it didn't happen, but I don't remember it.

Q. Now, please throw your mind right at those documents of March 22, March 23 and March 28. Were those documents discussed at Mr. Willcox's house or any of them? A. I have already told you that my recollection is that I did discuss the documents of March 22 with him at his house.

Q. What other person connected with the Interborough was with you? A. I don't remember that anyone was. Still, there may have been.

Q. Did you ever have Mr. Rogers with you? A. Mr. Rogers may have been. I don't remember.

Q. Well, think, please. Wasn't Mr. Rogers with you? A. I don't remember. He may have been. You want my own personal, distinct recollection, don't you?

Q. Yes, but don't make it too distinct. Give us your best recollection. A. I don't remember Mr. Rogers being with us. Still, he may have been.

Senator Thompson.— Mr. Shonts, now here is a letter that you wrote on March 22. Here is another letter that you wrote on March 23. Here are some interlineations in lead pencil on the letter of March 22, which are incorporated in your office in the letter of March 23, interlineations made by the hand of Mr. Willcox. Now, that being true, you must have seen Mr. Willcox between the letter of March 22 and the letter of March 23. A. I have already testified that that was my best judgment.

Senator Thompson.— Now, where did you see him? A. I told you I saw him at his house.

Senator Thompson.— Then, you saw him at his house in reference to the letter of March 22? A. That must have been so.

Senator Thompson.— There is no question of it. Q. Who was with you? A. I don't recollect that anyone was. Mr. Rogers may have been.

Q. What was said there regarding that document? A. The best recollection I have is the interlineation. Otherwise I wouldn't have remembered any thing about it. I don't distinctly recollect anything about it, but it is the testimony that is contained in the documents that makes me feel that we went over them there that night together.

Q. Mr. Shonts, we are spending some time upon this. I remember there was an occasion when your recollection was not distinct regarding Mr. Townes, and that it took several examinations to get your recollection back on the track, so I want you to put your recollection on this transaction and don't make it necessary to have two or three attacks of it. I want you, Mr. Shonts, to tell us

what happened there on March 22. You have just told the Chairman it was the night of Mrch 22. A. Based upon this evidence.

Q. What happened there? A. I don't have any distinct recollection, outside of that inherent evidence, and wouldn't have known that.

Q. Wasn't a plan agreed upon before you separated? A. Certainly not. Why, then, should we have had our changes of the 23 and the changes of the 28?

Q. Those were matters of detail. A. The 28th was no detail. That was a very important matter.

Senator Thompson.— You say "Why." You must have carried home with you when you left Mr. Willcox's house your letter of the 23d with his interlineations and changes, and you went back and changed it at your office and put it in typewritten form and had your Board of Directors give you authority to carry it out the same day, the 23rd. Now, it must have been pretty important and I think you ought to recollect. I think you ought to have a better memory about that thing. A. If wishing would make a man's memory better, I would wish my memory was better about all these things. I am giving the best impression I have. I am absolutely frank about anything I remember. Don't for a moment get any other idea into your head.

Senator Thompson.— I really think for a hundred thousand dollars a year you ought to have a better memory.

Q. Was Mr. Harkness present? A. I don't remember.

Q. Do you remember any occasion when Mr. Harkness was present? A. Yes.

Q. At Mr. Willcox's house? A. Not at this time but later on. I have an indistinct recollection of a meeting at Mr. Willcox's house at which there were a number of people present.

Q. Who were they? A. My recollection is that most of our Executive Committee were there, either Mr. Morgan or Mr. Davison or both, and some of the members of the Public Service Commission and maybe all of them, but whether that was later on when we got down to the dual subway or whether it has relation to this, I have no recollection.

Q. Well, now, that meeting where so many were present, what was the end of it? What did you agree on? A. Nothing in particular.

Q. What was the subject of discussion? A. It was one of these negotiations.

Q. Which one? A. I say I don't recollect whether that was when we got to the dual subway or whether it was in regard to these eariler negotiations.

Senator Thompson.— If it was in March, 1910, then it was these. It wasn't anything else until after March. Until after that time, there was no such thing as a dual subway ever thought of.

Q. I am going to read to you from an address of Leroy T. Harkness delivered before the Municipal Engineers of the City of New York, paper presented November 26, 1913, on pages 252 to 256.

Senator Thompson.— That speech is a public document, isn't it? It is from the record of the Public Service Commission. No question has ever been raised but that that is a public document.

Mr. Moss.— It was more than a little dinner, Mr. Chairman. That is, judging by the character and the quality of the people that were there.

> "Referring to the amendments of 1909, upon the enactment of these amendments to the rapid transit act, communications were at once addressed by the Commission to those likely to be interested in rapid transit development asking for proposals under the new law. Propositions were submitted by the Interborough Rapid Transit Company, which, however, failed to meet the approval of the Commission.
>
> "Despite the rejection of the first offer, negotiations were actively continued until it seemed, in the early part of 1910, as though an acceptable arrangement for adequate expansion would be agreed upon. As indicating the uncertainty and disappointments of these negotiations, I remember on one occasion during March, 1910, leaving the house of the Chairman of the Commission at two o'clock in the morning, after attending an extended conference with representatives of the

Interborough Company, at which it appeared that the negotiations had been successfully concluded and the plan agreed upon. The next day, however, the plan was rejected, and it was necessary to start almost over again."

A. He doesn't say who rejected it?

Q. I have read you just what he said. Now, this is March, 1910, Mr. Harkness was present, he left the house at two o'clock in the morning, several representatives of the Interborough Company were present and the negotiations were successfully concluded and the plan agreed upon. Now, I ask you to throw your memory back over that transaction. Do you remember it? A. No.

Q. You don't remember it? A. No.

Q. Have you a good memory? A. We went over that —

Q. Have you a good memory? A. I don't think it is necessary to go over that again. I am doing my best to answer your questions.

Q. I want to know whether your memory is good or bad. That is a fair question. A. I think I have a fair memory.

Q. Now, what representatives of the Company were there? A. I don't remember.

Q. Wasn't that plan outlined on March 22 discussed at that meeting? A. It probably was.

Q. Well, was it? A. I don't remember it, I am telling you.

Q. Do you believe it was? You said probably it was. I want to see how far you can carry that memory of yours. That may mean something and it may not. Do you believe it was? A. I don't believe that proposition of March 22 was discussed, if his statement that it was rejected the next day is true, no.

Senator Thompson.— We haven't explicit confidence in every statement made by Mr. Harkness not under oath. A. I only have to base my answers, when I don't remember, on the evidence that is before me.

Q. Have you recollection of some other day between the 22d of March and the 28th of March? A. At Willcox's house?

Q. Yes. A. No.

Q. Have you any recollection of a meeting at which that propo-

sition was made, whether it was made on the basis of the paper of March 22 or March 23 or March 28? A. The only recollection I have is, as I have already testified here two or three times today, and that was based on the interlineations and the corresponding changes in the memorandum of March 23. I took that document to Mr. Willcox's house and that we went over it together at his house on the evening or night of March 22d was based on the evidence.

Senator Thompson.— Well, if it was that letter of March 22, the fact that you stuck to it and revised your propositions indicates to us that there was some tentative agreement at least reached upon the 22d of March. If there was no tentative agreement reached, why did you extend it into these revisions of the 23d and the 28th? A. My recollection about that matter is that Chairman Willcox and myself never agreed on the profitableness of new subways.

Senator Thompson.— That isn't the question. A. In order to answer this question, Mr. Chairman, I have to do it in my own way.

Senator Thompson.— Here is what we see in this, Mr. Shonts. Here they were with their Tri-Borough scheme, which was a municipally built and municipally paid for and municipally owned scheme. They also had the money to do it with, but you didn't want that kind of competition. See? They could have paid for it, because of the extension of the debt limit. Now, here you were in these matters — and they are important. It is the most important thing you had to do around about those days, don't you think so? A. I have very distinct recollection about some of them, but you won't let me tell you.

Senator Thompson.— As long as you are getting distinct, I like them. A. To begin with, I want to make this clear to your mind, that all subways are city owned.

Senator Thompson.— Sometimes? A. It doesn't matter whether they are built with private capital or city capital or half of each, the title from the beginning is in the name of the city,

Senator Thompson.— On that we are agreed, but that is sometimes distinguished from possession. A. We are talking now about ownership, the title to ownership. The present subway and the new subways from the time of their inception have belonged to the city. The title is in the city. The Interborough were only the lessees of the present subway. The Interborough did not object at all, in fact the Interborough always believed in the economy of building city subways with city money, for one reason. Our present subway was built with city money. The title belongs to the city. We are the tenants. We guarantee certain obligations. At the expiration of our lease, if we make good, the city gets its property free. It doesn't cost them a cent.

Senator Thompson.— The question of time is important to me, as to when the city will get it. A. It gets it at the expiration of the lease.

Senator Thompson.— That is after we are all dead? A. The present subway cost less than four per cent. The interest on the money was about three and three-quarters per cent. The difference between city credit and private capital is from one and a half to one and three quarters per cent. You take a hundred million proposition, and you have from a million and a half to a million and three quarters in favor of using city credit as between you and profit and as between the city and profit if you are in partnership. The only reason in the world that the Interborough ever got into this situation with the offer of private capital was in 1909 when the city had no credit, had exhausted its debt limit, and when it had no means of providing money to extend its system. The Interborough came into the breach first in March, 1909, and afterwards in June, 1909, and amended it in September, 1909, all of which offers were rejected. In November, 1909, the debt limit of the city was enlarged and the city was put into position to build with city credit. The Interborough then felt as I have testified here, as I told Mayor Gaynor at St. James, and it is a public record, as it were.

Senator Thompson.— That is the first talk you had with Mayor Gaynor about it? A. Yes. Our proposition always was that the

Interborough's obligation for coming in with private capital then ceased.

Q. Why, Mr. Shonts, that arrangement was fixed up in 1909, by which the city's capital was released. A. November, 1909.

Q. And you knew that on March 22, 1910, didn't you, and you went on proposing to use your own money? A. At the request of Chairman Willcox.

Q. You revised it twice with the same thing in it. A. I understand that. I am trying to explain that, if you will let me. I said to him, "I don't believe you can ever build subways that will be profitable." We didn't agree. He said there were certain routes, or combinations of routes that in his judgment would. I said, "I don't, but we have an open mind, and I am very willing to turn our experts loose as against your experts and we will figure and see what combination of routes can be made profitable. But, before we undertake that, I would like to have you indicate what you think should be the basis, first, of gross earnings, whether it shall be derived from mileage or from ticket sales at stations or what. But, if expenses should be deducted, how the net earnings should be arrived at in order that when our engineers make these studies with your people they shall be governed by the same elements." That was done. He said, "I will go further than that, because I think we can't build too many subways but what they will be profitable. I think we should go on and agree upon the forms, so that in case your engineers and our minds meet on the profitableness of routes, that we won't have to go through this contractural form proposition again." And that was the reason, at his request, that these things were put in this definite form. Our engineers did work with them, it began to develop and it developed very rapidly in our minds between March 22, 23 and March 28, that what Mr. Willcox wanted (and I didn't blame him. It was all right. He was committed and believed in it) this Tri-Borough route. If they could get us to furnish private capital to build on the West side and to take Madison Avenue up the East side and make the extensions in Brooklyn and the Bronx, he would be having us step into the breach with private capital to complete what we call the "H" of the present Interborough System.. He would

be having all of the city money to put into the Tri-Borough and we would find ourselves confronted, upon the completion of our "H" with a rival city proposition riding side by side with us and which would bust us. When we got that through our minds, which we did when we changed from our proposition of March 23 to March 28, when we said, "We will have to withdraw Madison Avenue and we will suggest in lieu thereof" (we weren't quite as bald about it as I am now when I am looking at the Chairman over there. He was playing a foxy game and he was doing good work from his point of view, but we simply tumbled) — We simply said, "we will withdraw from the Madison Avenue line, but if you will let us make a lease on fair terms of so much of your Broadway Lexington that lies North of Forty-second Street, we will negotiate with you on that and furnish private capital for the rest." Why? Because, if that was agreed to, it removed that element of competition which would have ruined us financially and on which he could not have raised money.

Q. Didn't you come to an agreement, I ask you again, on the 22d of March, substantially as shown in that paper, that first letter? A. No, sir, we did not.

Q. Didn't you report it to your Board of Directors, that letter of March 22d? A. No, sir.

Q. Didn't the members of your Board of Directors object to your entering into a plan for the use of your own capital and suggest to you that there was a cheaper way of doing it, yes, or no, can't you answer that? A. I want to put myself in there when you say "the board."

Senator Thompson.— That is a fair question. A. I am with the Board on that.

Senator Thompson.— What did they say? A. Just what I got through saying to you now. Then was when we began to get wise to this proposition of our building up a proposition and leaving all the money for the city to build a rival concern.

Q. Didn't members of the Board of Directory say to you that it would be easier and cheaper to get the favor of the members of the city government than it would be to put in a vast amount of

private capital? A. Never, never in the world, and on that subject, I want to say something now —

Q. You have answered that question.

Senator Thompson.— You remember what you want to say and I will let you state it before you leave.

Q. You knew at that time that at least two members of the city administration had been outspoken against your Company, didn't you? A. I knew that.

Q. The Mayor and the Comptroller, as they were elected afterwards, were outspoken against your Company. A. I wouldn't say that. I don't think the Mayor was ever outspoken against our Company. The Mayor was outspoken against the use of private capital.

Q. Didn't you ever read his article in Pearson's? A. What Mayor are you talking about?

Q. Gaynor. A. Oh, yes, Mayor Gaynor was against our Company.

Q. Against your proposition in every shape and form? A. He wasn't against any proposition — there wasn't any proposition. He was against our Company.

Q. And against the proposition of having subways constructed in any other way than by the city. That was his platform, as I understood it.

Suspended for lunch.

EXHIBIT NO. 2.

"*March* 28, 1910.

"Dear Sir:

"Since our last formal communication of September 22, 1909, we have had repeated conferences upon the subject of our several propositions for the construction of new rapid transit facilities in this city. In these conferences you have manifested a particular desire to procure on behalf of the city a modification of our formal proposal to cover the following important respects:

"*First*: An agreement shortening the term of the original subway lease beyond the ultimate period of seventy-five years obtainable thereunder by renewal and a synchronizing of all leases, including that of the proposed extensions, so that the entire subway system might fall in to the city at the same time;

"*Second:* An agreement whereby the city might participate with this company in the operating profits from the new extensions;

"*Third*: An agreement in advance whereby this company would undertake to operate upon fair terms extensions to the subway system built by the city upon its own account. We believe that we are now able to substantially meet your views in the particulars stated. In order that you may now have our revised proposition before you in a comprehensive and definite form, we embrace this opportunity to entirely restate our offer. This letter, therefore, is to be taken as a substitute for our formal proposals of June 30, and September 22, 1909.

"We will state: First, the scope of the rapid transit improvements we now offer to build or complete for the city, divided into (a) subway extensions, (b) additions to the elevated system; and Second, the terms under which we are willing to carry out these improvements.

"*First: Physical layout.*

"(a) *Subway extensions.*

"1. *West Side Manhattan Extension.* Upon the West Side we propose to extend the present subway from about Broadway and Seventh Avenue, with four tracks, two for express trains and two for local trains, through Seventh Avenue to Greenwich Avenue; thence through Seventh Avenue as extended to Varick Street; thence through Varick Street to a connection with West Broadway at or near Franklin Street; thence through West Broadway and Greenwich Street to Cortlandt Street; thence as a two-track road through Greenwich Street to Battery Park, utilizing the present subway loop at Battery Park, or an additional loop track at Bat-

tery Park. In the event that Seventh Avenue should not be opened in time for the construction of the subway, the West Side extension will be built from the intersection of Seventh Avenue and Greenwich Avenue, through Greenwich Avenue to Clinton Place, thence through private property, public streets and public places to West Broadway and Fourth Street, thence through West Broadway to Greenwich Street, and thence to Corlandt Street and the Battery as above described.

"*Brooklyn Extension.* From the Intersections of Liberty and Greenwich Streets and of Cortlandt and Greenwich Streets, we propose to build one track through Liberty Street and one track through Cortlandt Street to the intersection of Liberty Street and Maiden Lane; thence two tracks under Maiden Lane to the East River; thence under the East River to Pineapple Street in Brooklyn; thence through Pineapple Street to an intersection with Fulton Street; thence through Fulton Street to an intersection with the present subway at or near Borough Hall Station of the present subway.

"2. *East Side Manhattan Extension.* We propose to build a four-track subway, with two local and two express tracks, from a point on Fourth Avenue between 39th and 45th Streets, through public streets and private property, in a westerly and northwesterly direction, to Madison Avenue; thence up Madison Avenue to the Harlem River at or about 138th Street; thence under the Harlem River, through public streets and private property, to a point on River Avenue between 146th and 149th Streets; from this point dividing, with two tracks, through public streets and private property, to a connection with the West Farms division of the subway at or about 149th Street and Gerard Avenue, and two tracks through River Avenue to Jerome Avenue and through Jerome Avenue to 194th Street, with the privilege of making the road a three-track road from 149th Street to 194th Street. The structure north of 149th Street, while built as an extension of the subway, will be in form an elevated road, the sub-

way construction emerging from the ground as soon as practicable north of 149th Street.

"3. *Moving Platforms.* We propose to build a moving platform from a connection with the East Side subway station at or near 14th Street, under Union Square and Broadway, to a connection with the West Side subway and the Steinway Tunnel as extended, at or near Times Square — free transfers to be exchanged between the moving platform and the subway.

"4. *Brooklyn Extension.* From the termination of the present subway at Atlantic and Flatbush Avenues we propose to build a four-track subway through Flatbush Avenue to the Prospect Park Plaza; thence easterly under Eastern Parkway to or about Nostrand Avenue.

"5. *Queens County Extension.* We propose to complete the New York and Long Island Railroad, known as the Steinway Tunnel, from a point near Jackson Avenue, Long Island City, under the East River, through 42d Street to a connection with the West Side subway system of Manhattan at or about Seventh Avenue. Free transfers will be exchanged between the Steinway Tunnel and the subway at Grand Central Station and Times Square.

"6. *White Plains Avenue Extension to the Subway.* We propose to build a two-track elevated railroad from a connection with the West Farms division of the subway at or near 177th Street northwesterly through West Farms Road and northerly through Morris Park Avenue, to the intersection with old White Plains Road to Becker Avenue, with the privilege of adding the third track.

"(b) *Elevated Railroad Improvements and Extensions.* We propose to build the third track upon the Second, Third, and Ninth Avenue elevated roads as follows:

"1. *Second Avenue Line.* From City Hall Station to about Pearl Street, by building two elevated tracks, above the present tracks; from about Pearl Street to Chatham Square by building two additional tracks upon about the same grade as the existing tracks; thence completing the third track to 129th Street.

"*Queens County Extension.* We also propose to construct a two-track extension of the Second Avenue elevated line from Second Avenue across the Queensboro Bridge, to the terminus of the Queensboro Bridge Plaza.

"2. *Third Avenue Line.* From the intersection of Pearl and New Chambers Streets, by building two additional upper-deck tracks, across the Second Avenue tracks at Chatham Square, to a point south of Canal Street; thence building the third track to 129th Street; thence through 129th Street to the Harlem River, crossing the Harlem River on a new double-deck railroad bridge, with two tracks upon the lower and two upon the upper level; thence over private right-of-way and public streets as a four-track road to the present Third Avenue elevated road at or about 145th Street; thence continuing the third track up the existing Third Avenue elevated structure to its terminus at or near Bronx Park; that portion of the third track north of 147th Street to be constructed when the passenger traffic requires it, or sooner should the railroad company so elect.

"*Third Avenue Terminal Connection.* We propose to build a two-track extension of the Third Avenue elevated road from a connection with the present road at or near Pelham Avenue and Webster Avenue; thence northerly through Webster Avenue to Gun Hill Road; thence easterly through Gun Hill Road to a connection with the proposed extension of the subway through White Plains Avenue.

"*Third Avenue Elevated Connection with West Farms Division of the Subway.* We propose to build a two-track elevated road connecting the Third Avenue elevated road with the existing West Farms Division of the subway as follows: Leaving the Third Avenue road at or about 143d Street, thence through private property and public streets to Willis Avenue; thence through Willis Avenue to Bergen Avenue; thence through Bergen Avenue, private property and public streets to a connection with the West Farms division of the subway at on near the intersection of the Westchester and Brook Avenues.

"3. *Ninth Avenue Extension.* We propose to complete

the third track upon the Ninth Avenue road, from Rector Street to Gansvoort Street, and from Gansvoort Street to the Harlem River at or about 155th Street; with a two-track elevated road from about 149th Street and Eighth Avenue, through Macomb's Dam Lane, crossing the Harlem River by a reconstruction of Macomb's Dam Bridge, or otherwise as the company may select, and thence through private and public spaces and streets to a connection with the Madison Avenue subway as extended, at or about 162d Street and River Avenue.

"*Second — Terms of Contract.*

"(*A*) *Subways.*

"1. All extensions to the subways shall be built as extras under the terms and conditions of Contract No. 1, except as follows:

"*a.* The cost of construction of the subway, including real estate for terminals, but not including right-of-way, easements, and privileges, shall be paid for by the contractor. The title to the subway extensions and terminals shall, nevertheless, vest in the city, but shall be subject to the right of the contractor to mortgage or pledge its interest or investment therein for the purpose of raising funds to construct and equip the same — which right of the contractor shall in turn be subject to a lien of the city for any damages sustained by reason of the failure of the contractor to comply with the contract, but shall otherwise remain free from forfeiture to the city.

"*b.* If it should be held by the courts of the State of New York, under any present or future provision of the law, that the contractor's interest in the subway, or the contractor's equipment employed in operating the subway, is subject to any form of State or municipal taxation, taxes so paid shall be deducted from and reimbursed to the contractor out of any net profits payable to the city as hereinafter provided for.

"*c.* The construction specifications shall require the construction work to be done under cover, except through the following portions of the route: Note: The only way to safely regulate this matter is for the engineers to agree in advance

upon the portion of the route along which open construction may be carried on. A general provision can be inserted directing them to agree upon open construction where it can be done without entailing upon the city an undue liability for damage to abutting property owners, but this merely postpones the difficulty.

"*d.* If requested by your Commission, the plans and specifications for the construction of the new extensions will be prepared by the contractor; but the general character of construction shall be substantially similar to that provided for by the specifications of Contract No. 1, unless it shall appear that in certain places, in order to provide for the security of the road and the safety of operations, a different form of construction is reasonably required.

"*e.* The subway extensions provided for herein shall be leased to the contractor, and the contractor shall enjoy the right to operate them, so long as he shall reasonably comply with the conditions of the said leases, for a period of forty-nine years from the date of the completion of the said extensions. The contract for the operation of the said extensions, however, may be terminated by the city, upon giving proper notice, at any time after the expiration of ten years from the date of completion of the said extensions; subject, however, to the obligation of the city, first, to repay the contractor the amount of his investment in the construction of the said subway extensions, plus fifteen per centum thereof — which sum shall decrease as the term for the operation of the said extensions continues, so that at the end of the full term no amount shall be payable by the city as compensation for the contractor's investment in the construction of the proposed extensions; second, that the equipment provided for the said extensions, suitable to and used for the purpose of operating the same, shall be purchased by the city at actual cost plus fifteen per centum thereof.

"*f.* The city shall secure to the contractor an extension of the original terms of the leases under subway Contracts Nos. 1 and 2 with the city to a period of forty-nine years from the date of the completion of the subway extensions contemplated

by the proposal. But, as additional consideration therefor, the contractor shall surrender the right, given under said contracts, to a renewal of said leases for additional terms of twenty-five years.

"*g.* This company will agree to complete the subway extensions contemplated by this proposal and to open the same for operation within five years from the time when it is given the right to proceed with the construction; and no delay beyond the said period of five years in opening the said extensions for operation, except in so far as the same may be due to causes over which the contractor has no control, or as the time for opening the same may be extended by the Commission, shall enlarge the subway leases beyond the terms provided for in the preceding paragraph.

"*h.* The surplus earnings arising from the operation of the said extensions shall be equally divided between the city and the contractor. The surplus earnings shall be arrived at as follows:

"The gross earnings shall be determined by the amount of the ticket sales at the stations on the lines of the new extensions, or, in the option of the contractor, from the sum represented by the number of tickets deposited by passengers using the new extensions in the chopping-boxes of the stations on the lines of the new extensions.

"From the gross earnings thus arrived at, there shall be deducted:

"(1) The cost of administration, which shall be determined by charging to the new extensions such proportion of the cost of administration of the whole system as the mileage of the new extensions bears to the mileage of the system as a whole;

"(2) The cost of operation shall be determined by charging the new extensions with such proportion of the cost of operating the entire system as the car mileage of the new extensions may bear to the car mileage of the entire system;

"(3) The cost of maintenance shall be determined by ascertaining the cost of maintaining the structures of the extensions, including the necessary repairs and renewals thereof

and an appropriate allowance for depreciation, and the necessary repairs and renewals of the equipment of the new extensions and a reasonable charge for the depreciation thereof;

"(4) All real estate taxes and assessments attributable to the new extensions, and State tax, if any, upon the gross earnings thereof;

"(5) A sinking fund of one per centum upon the cost of construction for the purpose of amortizing the cost of same; and

"(6) Six per centum upon the cost of construction of the new extensions and of the equipment plus fifteen per centum thereof, including as a part of said cost interest during construction. The fifteen per centum shall cover the general administrative expenses, discount on bonds, and the contractor's risk.

"*i*. In case of gross receipts in any years should not be sufficient to pay in full the above items chargeable against the gross receipts of the extensions, the deficit shall be made good out of any surplus earnings of the said extensions for any subsequent year or years, before any profits from the said roads shall be divided between the city and the contractor.

"*j*. The contractor will undertake, if desired by the Public Service Commission representing the City of New York, to operate new subways, which are normal extensions to existing subways operated by this company or to the subway extensions herein proposed, and which may be constructed by the city at its own cost; provided, that the operation of such city-built extensions shall not diminish the company's profits from its existing system or its proposed extensions thereto, and provided, further, that the gross earnings from such extensions shall be sufficient to pay the operating cost and leave a profit to this company.

"*k*. This company shall complete the railroad of the New York and Long Island Tunnel Company, generally known as the Steinway Tunnel, as hereinbefore provided for, and the said railroad when and as completed shall be treated in all respects as a subway extension and shall be subject to the

same conditions as attach to subway extensions under the terms of this letter.

"1. To assist the company in financing the construction of the subway extensions herein provided for, it may become important that the city should consent that the subway extensions, in lieu of being constructed as extras under Contract No. 1, may be constructed under an independent contract, having the same tenor as Contract No. 1, except as herein modified; and that the privilege of contracting for and constructing the said subway extensions and operating the same may be assigned by this company to a company to be organized under the Rapid Transit Law, all stock of which except the qualifying sharese of directors shall be owned by this company. If this company should exercise either of the foregoing privileges, it would, of course, be subject to the condition that the entire subway system be operated as a whole for a single five-cent fare.

"*(B) Terms for Third-tracking the Eleveated Roads.*

"Over the greater portion of the elevated system the elevated roads have asserted, and are thought to possess, the legal right to build third tracks. The grant of a new franchise by this Commission, while essential to completing the third tracks upon the road, will constitute a wholly new franchise only in certain parts. As to the remainder of the system, it would be largely confirmatory of what seem to be valid and surviving grants. In view of these circumstances and the fact that the construction of the third tracks will not substantially burden, to any greater extent than at present, the surface of the streets already occupied by existing structures, and that the franchise in question can be of no value to any other company than the company operating the present elevated lines, we fell that we are entitled to expect terms at least favorable as those granted by the old Board of Rapid Transit Commissioners to the Manhattan Railway Company in 1898 — that is to say, two per centum of the increased receipts derived from the stations served by the third track

and lying along those portions of the elevated lines on which a third track is not already in existence.

"This third-tracking of the elevated would not only bring a more expeditious rapid transit relief for the inhabitants of this city than any other plan that can be devised and speedily put into effect, but it would enable the Interborough Company to sustain some part of the burden that it will have to assume with respect to the construction of new subways, if its present offer should be accepted by the city. We, therefore, feel that this right should be conceded to our company, if our offer to build the subway extensions should be accepted.

"Very respectfully,

President."

"Hon. William R. Willcox.

"Chairman, Public Service Commission for the First District, State of New York, Tribune Bldg., New York City."

EXHIBIT NO. 3.

"*March* 28, 1910.

"Dear Sir: —

"In our formal letter of June 30, 1909, we laid before your Commission a proposition to round out the subway system of this City, by building a down-town leg through Seventh Avenue as extended, and up-town legs through Lexington and Third Avenues, using one of the latter streets for local tracks and the other for express tracks. We also proposed to complete the third-tracking of the elevated lines, and to put the Steinway Tunnel into operation.

Upon August 27, replying to our communication of June 30th, you requested that we propose terms for building a four-track subway line up Madison Avenue, with a possible extension to tap a new era in the Bronx. In reply thereto, upon September 22d, we endeavored to meet your wishes by eliminating from our original proposition the construction of

subways upon Lexington and Third Avenues and substituting in lieu thereof a four-track subway upon Madison Avenue to about 146th Street, at which point we proposed to connect upon one side with the West Farms extension of the existing subway and upon the other with the proposed extension of the Sixth Avenue elevated line out River and Jerome Avenues to 194th Street. The subway extensions we proposed to build as extras under the terms of Contract No. 1, but with Interborough capital.

"Since this communication we have had a number of further conferences with you, in which you have pressed upon us a modification of our original proposal to cover the following particulars: First, an enlargement of our subway proposal, so as to provide for more extensive connections with Brooklyn and Long Island City; second, a shortening of the original subway lease beyond the ultimate period of seventy-five years obtainable by renewal thereunder, with a synchronizing of the terms of all existing and proposed subway leases so that the entire subway system might revert to the City at the same time; third, a participation by the City in the operating profits of all new extensions; and, fourth, an agreement whereby this Company would undertake to operate upon fair terms such subways as the City might hereafter build directly with its own capital and which are logical extensions of the enlarged systems that the Interborough Company proposes to construct.

While these material concessions are pressed upon us on the one hand, upon the other we are confronted with the prospect that, if the concessions should be made and the proposed enlarged system, including the Madison Avenue line, should be constructed, we would be met at the very threshold of our venture with City competition from the construction by the City of the proposed Broadway-Lexington Avenue route with its Bronx extensions. After the most careful consideration of this situation, we are convinced that we cannot, without entailing upon the Interborough Company risks which it might not be asked to assume, concede the points you desire and at the same time build, in competition with the Broad-

way-Lexington Avenue route, the proposed Madison Avenue line. It seems entirely clear to us that if the City were now in possession of all subway lines and charged with the sole duty of extending that system, it would not contemporaneously build both the Broadway-Lexington Avenue line and the Madison Avenue line. Such a policy would concentrate enormous expenditures upon a single section of the City at the expense of other sections, and would result in the needless duplication of transit lines with a consequent inability to operate either line without financial loss. But if such a construction policy would be unwise upon the part of the City, if solely charged with dealing with the situation, how much more unwise would it seem to be for the Interborough Company to become a party thereto, which, with a higher burden of high interest charges and limited franchises, would thus immediately be brought into competition with the superior credit and perpetual rights of the City. Under these circumstances, both our duty to our stockholders and financial backers, and a proper respect to the views of the City's responsible authorities, seem to require that we should endeavor to accommodate our plans to the City's plans, and so conform our proposal for the new subways, that these subways when and if constructed by the Interborough Company, may be operated in harmony and not in conflict with the subways that the City proposes to construct. We believe that such an end is attainable, and that it may be attained in such a way as to enable us at the same time to yield upon substantially the important concessions, above outlined, which you desire of the Interborough Company.

In lieu of constructing the Madison Avenue line with Interborough capital, we therefore propose a lease to the Interborough Company of the Broadway-Lexington Avenue route when and as completed, and at the same time a construction by the Interborough Company with its own capital of such other extensions to its system as when completed will, in conjunction with the Broadway-Lexington Avenue route, afford the City at the earliest possible date a well balanced and in no part redundant subway system. While we would be will-

ing, if it should be insisted upon, to assume the lease of that portion of the Broadway-Lexington line lying south of 42d Street we feel that we should point out that under the plan we propose the immediate construction of that portion of the line does not seem to be required. The existing lines south of 42d Street afford a normal and sufficient outlet for that portion of the Broadway-Lexington Avenue lines lying south of 42d Street; and will become particularly true when by reason of the construction of four tracks upon the West Side from Times Square to lower Manhattan the present west-side up-town subway traffic will be taken care of by this west-side down-town extension. With two complete four-track systems upon the East and West Sides, respectively, the construction of an additional four-track system south of 42d Street would therefore, for the present at least, seem to be superfluous. If future experience should prove otherwise, we would always be prepared to operate that portion of the route upon the same terms as the nothern portion, which in any event should first be pressed to completion.

With this preliminary statement, we will now set forth: First, the rapid transit facilities we offer to build for the City with out own funds, divided into (A) subway extensions, (B) additions to the elevated system; Second, the terms upon which we propose to carry out these improvements; and, Third, the terms upon which we will operate the Broadway-Lexington Avenue route in connection with the extensions we propose to build directly.

"*First:*

"*Subway Extensions to be Built by the Interborough Company.*

"1. *West Side Manhattan Extension.* Upon the West Side we propose to extend the present subway from about Broadway and Seventh Avenue, with four tracks, two for express trains and two for local trains, through Seventh Avenue to Greenwich Avenue; thence through Seventh Avenue as extended to Varick Street; thence through Varick Street to a connection with West Broadway at or near Franklin

Street; thence through West Broadway and Greenwich Street to Battery Park, utilizing the present subway loop at Battery Park, or an additional loop track at Battery Park. In the vent that Seventh Avenue should not be opened in time for the construction of the subway, the West Side extension will be built from the interesection of Seventh Avenue and Greenwich Avenue, through Greenwich Avenue to Clinton Place, thence through private property, public streets and public places to West Broadway and Fourth Street, thence through West Broadway to Greenwich Street, and thence to Cortlandt Street and the Battery as above described.

"*Brooklyn Extensions.* From the intersections of Liberty and Greenwich Streets and of Cortlandt and Greenwich Streets we propose to build one track through Liberty Street and one track through Cortlandt Street to the intersection of Liberty Street and Maiden Lane; thence two tracks under Maiden Lane to the East River; thence under the East River to Pineapple Street in Brooklyn; thence through Pineapple Street to an intersection with Fulton Street; thence through Fulton Street to an intersection with the present subway at or near Borough Hall station of the present subway.

"2. *Moving Platforms.* We propose to bnild a moving platform from a connection with the East Side subway station at or near 14th Street, under Union Square and Broadway, to a connection with the West Side subway and the Steinway Tunnel as extended, at or near Times Square — free transfers to be exchanged between the moving platform and the subway.

"3. *Brooklyn Extension.* From the termination of the present subway at Atlantic and Flatbush Avenues we propose to build a four-track subway through Flatbush Avenue to the Prospect Park Plaza; thence easterly under Eastern Parkway to or about Nostrand Avenue.

"4. *Queens County Extension.* We propose to complete the New York and Long Island Railroad, known as the Steinway Tunnel, from a point near Jackson Avenue, Long Island City, under the East River, through 42d Street to a connec-

tion with the West Side subway system of Manhattan at or about Seventh Avenue. Free transfers will be exchanged between the Steinway Tunnel and the subway at Grand Central Station and Times Square.

"(*B*) *Elevated Railroad Improvements and Extensions.*

"We propose to complete the third track upon the Second, Third, and Ninth Avenue elevated roads as follows:

"1. *Second Avenue Line.* From City Hall station to about Pearl Street, by building two elevated tracks, above the present tracks; from about Pearl Street to Chatham Square, by building two additional tracks upon the same grade as the existing tracks; thence completing the third track to 129th Street.

"*Queens County Extension.* We also propose to construct a two-track extension of the Second Avenue elevated line from Second Avenue across the Queensboro Bridge, to the terminus of the Queensboro Bridge Plaza.

2. *Third Avenue Line.* From the intersection of Pearl and New Chambers Streets, by building two additional upper-deck tracks, across the Second Avenue tracks at Chatham Square, to a point south of Canal Street; thence building the third track to 129th Street; thence through 129th Street to the Harlem River, crossing the Harlem River on a new double-deck railroad bridge, with two tracks upon the lower and two upon the upper level; thence over private right-of-way and public streets as a four-track road to the present Third Avenue elevated road at or about 145th Street; thence continuing the third track up the existing Third Avenue elevated structure to its terminus at or near Bronx Park; that portion of the third track north of 147th Street to be constructed when the passenger traffic requires it, or sooner should the railroad company so elect.

"*Third Avenue Terminal Connection.* We propose to build a two-track extension of the Third Avenue elevated road from a connection with the present road at or near Pelham Avenue and Webster Avenue; thence northerly through Webster Avenue to Gun Hill Road; thence easterly through

Gun Hill Road to White Plains Avenue; thence northerly through White Plains Avenue to Becker Avenue.

"*Third Avenue Elevated Connection with West Farms Division of the Subway.* We propose to build a two-track elevated road connecting the Third Avenue elevated road with the existing West Farms division of the subway as follows: Leaving the Third Avenue road at or about 143d Street, thence through private property and public streets to Willis Avenue; thence through Willis Avenue to Bergen Avenue; thence through Bergen Avenue, private property and public streets to a connection with the West Farms division of the subway at or near the intersection of Westchester and Brook Avenues.

"3. *Ninth Avenue Extension.* We propose to complete the third track upon the Ninth Avenue road, from Rector Street to Gansvoort Street, and from Gansvoort Street to the Harlem River at or about 155th Street.

"*Connection with Proposed Jerome Avenue Subway.* We propose to build a two-track elevated road from about 149th Street and Eighth Avenue, through Macomb's Dam Lane, crossing the Harlem River by a reconstruction of Macomb's Dam Bridge, or otherwise as the company may select, to a connection with the Jerome Avenue extension of the Broadway-Lexington Avenue line at or about 162nd Street and River Avenue. Through such a connection rapid transit can be extended to this section of the Bronx within from two to four years earlier than by any other method.

"*Second — Terms of Contract.* (*A*) *Subways.*

"1. All extensions to the subways shall be built as extras under the terms and conditions of Contract No. 1, except as follows:

a. The cost of construction of the subway, including real estate for terminals, but not including right-of-way, easements, and privileges, shall be paid for by the contractor. The title to the subway extensions and terminals shall, never-

theless, vest in the city, but shall be subject to the right of the contractor to mortgage or pledge its interest or investment therein for the purpose of raising funds to construct and equip the same — which right of the contractor shall in turn be subject to a lien of the city for any damages sustained by reason of the failure of the contractor to comply with the contract, but shall otherwise remain free from forfeiture to the city.

"*b.* If it should be held by the courts of the State of New York, under any present or future provision of the law, that the contractor's interest in the subway, or the contractor's equipment employed in operating the subway, is subject to any form of State or municipal taxation, taxes so paid shall be deducted from and reimbursed to the contractor out of any net profits payable to the city, as hereinafter provided for.

"*f.* The city shall secure to the contractor an extension of the original terms of the leases under subway contracts Nos. 1 and 2 with the City to a period of forty-nine years from the date of the completion of the subway extensions contemplated by this proposal. But, as additional consideration therefor, the contractor will surrender the right, given under said contracts, to a renewal of said leases for additional terms of twenty-five years.

"*g.* This Company will agree to complete the subway extensions contemplated by this proposal and to open the same with the conditions of the said leases, for a period of forty-nine years from the date of the completion of the said extensions. The contract for the operation of the said extension, however, may be terminated by the city, upon giving proper notice, at any time after the expiration of ten years from the date of completion of the said extensions; subject, however, to the obligation of the city, first, to repay the contractor the amount of his investment in the construction of the said subway extensions, plus fifteen per centum thereof — which sum shall decrease as the term for the operation

of the said extensions continues, so that at the end of the full term no amount shall be payable by the city as compensation for the contractor's investment in the construction of the proposed extensions, second, that the equipment provided for the said extensions, suitable to and used for the purpose of operating the same shall be purchased by the city at actual cost plus fifteen per centum thereof.

"*c.* The construction specifications shall require the construction work to be done under cover, except through the following portions of the route: Note: The only way to safely regulate this matter is for the engineers to agree in advance upon the portion of the route along which open construction may be carried on. A general provision can be inserted directing them to agree upon open construction where it can be done without entailing upon the city an undue liability for damage to abutting property owners, but this merely postpones the difficulty.

"*d.* If requested by your Commission, the plans and specifications for the construction of the new extensions will be prepared by the contractor; but the general character of construction shall be substantially similar to that provided for by the specifications of Contract No. 1, unless it shall appear that in certain places, in order to provide for the security of the road and the safety of operations, a different form of construction is reasonably required.

"*e.* The subway extensions provided for herein shall be leased to the contractor, and the contractor shall enjoy the right to operate them, so long as he shall reasonably comply for operation within five years from the time when it is given the right to proceed with the construction, and no delay beyond the said period of five years in opening the said extensions for operation, except in so far as the same may be due to causes over which the contractor has no control, or as the time for opening the same may be extended by the Commission, shall enlarge the subway leases beyond the terms provided for in the preceding paragraph.

"*h.* The surplus earnings arising from the operation of the said extensions shall be equally divided between the city and the contractor. The surplus earnings shall be arrived at as follows:

"The gross earnings shall be determined by the amount of the ticket sales at the stations on the lines of the new extensions, or, in the option of the contractor, from the sum represented by the number of tickets deposited by passengers using the new extensions in the chopping-boxes of the stations on the lines of the new extensions.

"From the gross earnings thus arrived at there shall be deducted:

"(1) The cost of administration, which shall be determined by charging to the new extensions such proportion of the cost of administration of the whole system as the mileage of the new extensions bears to the mileage of the system as a whole;

"(2) The cost of operation, which shall be determined by charging the new extensions with such proportion of the cost of operating the entire system as the car mileage of the new extensions may bear to the car mileage of the entire system;

"(3) The cost of maintenance, which shall be determined by ascertaining the cost of maintaining the structures of the new extensions, including the necessary repairs and renewals thereof and an appropriate allowance for depreciation, and the necessary repairs and renewals of the equipment of the new extensions and a reasonable charge for the depreciation thereof;

"(4) All real estate taxes and assessments attributable to the new extensions, and State tax, if any, upon the gross earnings thereof.

"(5) A sinking fund of one per centum upon the cost of construction for the purpose of amortizing the cost of same; and

"(6) Six per centum upon the cost of construction of the new extensions and of the equipment plus fifteen per cen-

tum thereof, including as a part of said cost interest during construction. The fifteen per centum shall cover the general administrative expenses, discount on bonds, and the contractor's risk.

"*i.* In case the gross receipts in any year should not be sufficient to pay in full the above items chargeable against the gross receipts of the extensions, the deficit shall be made good out of any surplus earnings of the said extensions for any subsequent year or years, before any profits from the said roads shall be divided between the city and the contractor.

"*j.* The contractor will undertake, if desired by the Public Service Commission representing the City of New York, to operate new subways, which are normal extensions to existing subways operated by this company or to the subway extensions herein proposed, and which may be constructed by the city at its own cost; provided, that the operation of such city-built extensions shall not diminish the company's profits from its existing system or its proposed extensions thereto, and provided, further, that the gross earnings from such extensions shall be sufficient to pay the operating cost and leave a profit to this company.

"*k.* This company will complete the railroad of the New York and Long Island Railroad Company, generally known as the Steinway Tunnel, as hereinbefore provided for, and the said railroad when and as completed shall be treated in all respects as a subway extension and shall be subject to the same conditions as attach to subway extensions under the terms of this letter.

"*l.* To assist the company in financing the construction of the subway extensions herein provided for, it may become important that the city shall consent that the subway extensions, in lieu of being constructed as extras under Contract No. 1, may be constructed under an independent contract, having the same tenor as Contract No. 1, except as herein modified; and that the privilege of contracting for and con-

structing the said subway extensions and operating the same may be assigned by this company to a company to be organized under the Rapid Transit Law, all stock of which except the qualifying shares of directors shall be owned by this company. If this company should exercise either of the foregoing privileges, it would, of course, be subject to the condition that the entire subway system should be operated as a whole for the single five-cent fare.

(*B*) *Terms for Third-Tracking the Elevated Roads.* Over the greater portion of the elevated system the elevated roads have asserted, and are thought to possess, the legal right to build third tracks. The grant of a new franchise by this Commission, while essential to completing the third tracks upon the road, will constitute a wholly new franchise only in certain parts. As to the remainder of the system, it would be largely confirmatory of what seem to be valid and surviving grants. In view of this circumstance and the fact that the construction of the third tracks will not substantially burden, to any greater extent than at present, the surface of the streets already occupied by existing structures, and that the franchise in question can be of no value to any other company than the company operating the present elveated lines, we feel that we are entitled to expect terms at least as favorable as those granted by the old Board of Rapid Transit Commissioners to the Manhattan Railway Company in 1898 — that is to say, two per centum of the increased receipts derived from the stations served by the third track and lying along those portions of the elevated lines on which a third track is not already in existence.

" This third-tracking of the elevated would not only bring a more expeditious rapid transit relief for the inhabitants of this city than any other plan that can be devised and speedily put into effect, but it would enable the Interborough Company to sustain some part of the burden it will have to assume with respect to the construction of new subways, if its present offer should be accepted by the city. We, therefore, feel that this right should be conceded to our company, if our

offer to build the subway extensions should be accepted. We are prepared to proceed at once with the completion of the third-tracking upon the elevated lines.

Third:

"We are prepared to proceed with the construction of the subway lines above described, as soon as a contract is entered into with the city for the operation of the lines of the proposed Broadway-Lexington Avenue route, to be built by the city, north of 42d Street.

"The precise terms upon which we should operate the Broadway-Lexington Avenue line may be made the subject of further conference. But in a general way we will say that we are prepared to supply the equipment for the operation of the Broadway-Lexington Avenue line as taken over by the Interborough Company, and to divide with the city all net earnings proceeding from the operation of that line. These net earnings would be arrived at by crediting to the Broadway-Lexington Avenue route gross earnings upon the basis of tickets sold or deposited at the stations on the lines of this route, and charging against the gross earnings the cost of administration, operation and maintenance, distributed according to the method above set forth in the case of the subway extensions proper, a sinking fund of one per centum, interest upon the bonds issued by the city to pay for the construction of the said route, a reasonable sum for the depreciation of the equipment, and a sum equal to the average interest payable by the Interborough Company upon the cost of equipment required for the operation of the said route.

"Very respectfully,

"President.

"Hon. William R. Wilcox,

"Chairman, Public Service Commission for the First District of New York, Tribune Building, New York."

EXHIBIT NO. 5.

Copy of Three Scratch Pad Sheets of Pencil Figures.

First Sheet.

37,600,000 + 10%		
3,760,000 =		41,360,000
Equipment	=	22,500,000
Carry chgs.	=	7,575,000
40,500,000 + 10%		
4,050,000		44,550,000
44,550,000		115,985,000
		5-½
893,500		57,992,500
538,825		579,725,000
$354,675		$637,717,500
		691,600
		$538,825

Second Sheet.

37,600,000 + 20%	=	45,120,000
Equipment	=	2,500,000
Carrying chgs.	=	7,575,000
		75,195,000
75,195,000 c 7%	=	5,263,650
40,500,000 + 20 %		
48,600,000 c 5½	=	2,673,000
		7,936,650
893,500		6,916,000
1,020,650		1,020,650
1,914,150		

Third Sheet.

37,600,000 + 10%	=	41,360,000
Equipment	=	22,500,000
Carrying chgs.	=	7,575,000
		71,435,000
71,435,000 c 7%	=	5,000,450
40,500,000 + 10%		
44,550,000 c 5½	=	2,450,250
		7,450,700
893,500		6,916,000
434,700		
		434,700
1,328,200		

New York, *March* 25, 1910.

"Mr. T. P. Shonts, President.

"Dear Sir:

"I understand unofficially that the engineers of the Public Service Commission are now making the drawings of the Broadway-Lexington Avenue route north of 42nd Street under Lexington Avenue as a double-deck subway. Therefore, in connection with conversation had with you yesterday regarding the advisability of this company offering to build our subways as planned south of 42nd Street via Seventh Avenue and to Brooklyn with private capital, which we estimated will cost to construct and equip, together with the carrying charge during the period of construction, $50,825,000 with private capital, providing the City proceeded with the immediate construction of that portion of its Broadway-Lexington Avenue route lying north of 42nd Street and agreeing with this Company to at once enter into an operating lease of this portion of the Broadway-Lexington route, also a lease for the operation of the Broadway-Lexington Avenue route south of 42nd Street, should it ever be constructed by the City.

"We, as you know, have never had an opportunity to ex-

amine the plans of the Broadway-Lexington Avenue route as they are being prepared by the engineers of the Public Service Commission for this route is similar to those plans and on this basis I caused our engineers, through Mr. Dyo, to give me an estimate of the Broadway-Lexington Avenue plans north of 42nd Street, and he advises me that the construction costs for the double-deck construction under conditions of contract No. 1, up Lexington Avenue, except as they may be modified by the necessity of doing a part of the work under cover, would be.....$40,500,000
plus carrying charge period of construction of about 3,250,000

total $43,750,000
Estimated cost of equipment..... 12,500,000
plus interest during construction of..... 500,000

total $13,000,000
Plus cost of construction of the 6th Ave. Elevated road from 149th St. to a connection with the Jerome Ave. Division of the Broadway-Lexing Ave. Subway . .....:.... 600,000

Total $13,600,000

"Assuming that 4½ per cent. City bonds are issued and 1 per cent. sinking fund to cover the construction costs north of 42d Street and the cost for moneys expended by this Company to be 7 per cent., we have the following:

"Total City funds used, $43,750,000 at 5½ per cent, $2,406,250.

"Total private capital, $64,425,000 at 7 per cent., $4,509,750.

"Total Interest charge, $6,916,000.

"Estimated passenger business 5 years hence, 600,000 passengers per day, $10,950,000 per year 45 per cent. operating expense would leave a net earning of $6,022,500.

"Deficit first year, $893,500 on Subways.

"On the Elevated Railroad improvements heretofore sug-

gested the cost of which was approximately $2,007,500 leaving a surplus of about $600,000.

" Therefore, you will see on this basis the subways proposed would show a deficit of $893,500 and the Elevated a surplus of $600,000 or a deficit on the whole proposed new system of about $300,000.

" Yours very truly,
(Signed) FRANK HEDLEY,
" Vice-Pres. & Gen'l Mgr.

COPY.

Estimated Cost of Constructing Proposed Extensions South of 42nd Street.

Four tracks south from 42nd Street and 7th Ave. to Greenwich Street and Liberty St....	$16,800,000
Liberty Street Tunnel to a connection with the present subway near Borough Hall, Brooklyn	7,500,000
Four track extension from Flatbush and Atlantic Aves. to Nostrand Ave. and Eastern Parkway	5,500,000
Moving sidewalk on Broadway between 14th St. and 42nd Street	5,000,000
Extension, Steinway Tunnel to Seventh Ave...	1,800,000
Miscellaneous	500,000
Total	$37,100,000

Distribution.

Construction, first year.....	$ 9,000,000
" second year	12,100,000
" third year	11,000,000
" fourth year	5,000,000
Equipment, Power, Signals, Yards, Etc., third year	950,000
Equipment, Power, Signals, Yards, Etc., fourth year	8,550,000
Equipment, Power, Signals, and Interlocking, Steinway Tube, first year	4040,000

Total, first year	9,400,000
second year	12,100,000
third year	11,950,000
fourth year	13,550,000
Totals	$37,100,000
	9,500,000
	400,000
	$47,000,000

It is estimated that this new extension will have an earning power of approximately $3,750,000 per year.

MONDAY AFTERNOON SESSION.

Witness MR. THEODORE P. SHONTS.

Examination by Mr. Frank B. Moss.

Q. Mr. Shonts, referring to these minutes of the 23rd of March, of the Executive Committee just before that meeting of the Board of Directors? A. Well, I don't remember.

Q. Have you a minute book here? A. I think so.

Q. On page 48 is a minute of the meeting of the Board of Directors, March 23, 1910, at 11:15. At page 51, there is a minute of the meeting of the Executive Committee at 11 o'clock. I will read it in:

"A regular meeting of the Executive Committee of the Interborough Rapid Transit Company was held at the office of the Company, No. 165 Broadway, New York City, on

Wednesday, March 30, 1910, at 11 o'clock A. M., pursuant to notice given in accordance with the By-Laws.

"Present, Mr. Edward J. Berwind, Mr. Andrew Freedman, Mr. Theodore P. Shonts, Mr. Cornelius Vanderbilt. Mr. Theodore P. Shonts in the Chair.

"Minutes of the regular meeting of this Committee held on Wednesday, March 23rd, were read and approved. There

being no further business, on motion duly made and seconded, the meeting adjourned.

"Page 45: A regular meeting of the Executive Committee of the Interborough Rapid Transit Company was held at the office of the company, No. 165 Broadway, New York City, on Wednesday, March 23, 1910, at 11 o'clock A. M., pursuant to notice given in accordance with By-laws.

"Present: Mr. Edward J. Berwind, Mr. Andrew Freedman, Mr. Theodore P. Shonts, Mr. Cornelius Vanderbilt. Mr. Theodore P. Shonts in the Chair.

"The minutes of the regular meeting of this Committee held on Wednesday, March 16th, 1910, were read and approved. The President stated that this Company desired to borrow $250,000 from the Interborough Metropolitan Company, and $60,000 from the Subway Realty Company for its corporate purposes.

"On motion duly seconded it was resolved that the proper officers of this Company be, and they hereby are, authorized to borrow from the Interborough Metropolitan Company the sum of $250,000, and from the Subway Realty Company the sum of $60,000; and to execute and deliver thereupon demand notes of this Company to said Interborough Metropolitan, and Subway Realty, companies, dated March 31st, 1910, with interest at the rate of three and one half per cent. per annum. The president brought up the matter of lengthening the station and platforms of Atlantic Avenue Station.

"(Then follows a discussion of that; nothing bearing upon the matter in question.)

"On motion duly seconded it was resolved that the consent of the Interborough Rapid Transit Company be, and it hereby is, given for the subletting of the work aforesaid.

"The President stated that all of the subway cars had now been equipped with destination signs; that it was desired to similarly equip the cars of the Elevated Division, the expense of which would amount to approximately $20,000. On motion duly seconded it was resolved: That the President be, and he hereby is, authorized to contract for the equipment of all of the cars of the Manhattan Elevated Di-

vision of this Company with destination signs, with cost not exceeding $28,000.

"There being no further business, on motion duly made and seconded, the meeting was adjourned."

That meeting preceded the Directors' meeting by fifteen minutes. The Directors' meeting gave to the Executive Committee the power to take to itself the making and closing of Subway negotiations.

Q. Wasn't there anything said in that Executive Committee meeting at 11 o'clock, or during that meeting, about the subject with which the Directors' meeting concerned itself? A. Not to my knowledge.

Q. Now, there are four leading directors, and you said that you generally talked all things over with them. Haven't you some recollection that you discussed the meeting you had had the night before with Commissioner Wilcox? A. No.

Q. Did you keep it from them? A. No. I suppose I discussed it with the full board, later on. There was only fifteen minutes difference. We frequently do that.

Q. Wasn't there something said in that meeting by at least one of those persons upon the subject of the proposal you had with Mr. Willcox? A. Not to my recollection.

Q. Didn't some one of those men express himself as against the making of any such arrangement with Mr. Willcox? A. Not that I remember of.

Q. Wasn't there something said to the effect that it could be done cheaper? A. No.

Q. Wasn't there something said to the effect that you could get the help of some members of the City Administration without having to spend so much money out of the capital of the Company? A. No, sir.

Q. Was anything said about members of the City Administration or any of them? A. No, sir.

Q. Was any member of the City Administration discussed at either the meeting of the Executive Committee or the meeting of the Directors? A. Not to the best of my recollection.

Q. Have you any recollection on the subject? A. My best recollection is that it was not.

Q. Well, there must have been a discussion, Mr. Shonts, preceding the action taken in the Directors' meeting. Do you remember any part of that discussion? A. As I say, I recollect that I brought the Board down to date on the question of my negotiation with Mr. Wilcox.

Q. I understand. But had you before, in the case of any other proposal of the Company, given the entire power to the Executive Committee? A. Well, under our by-laws, when the regular meeting was not in session, the Executive Committee has that power.

Q. Of course; that is common. But here, without the by-law, beyond the by-law, is a resolution not acting between meetings, but acting all the time, giving to the Executive Committee that extraordinary power. A. The purpose of that was —

Q. Never mind, I haven't asked that question. Had that ever been done before that? A. I don't remember.

Q. You don't remember that it ever was, do you? I can't find it. A. I don't remember that it was; I don't remember that it wasn't.

Q. Was it done afterwards? A. I don't remember.

Q. Can you remember a single occasion in the many proposals, and amended proposals that were made, where the power was given to the Executive Committee? A. Oh, that often happens.

Q. Can you specify one? A. No, I can't. But I can find it in there.

Q. But it didn't often happen in reference to subway proposals? A. No.

Q. That is what I am talking about? A. I thought you meant as a general proposition.

Q. What was the reason that was assigned for giving to your Executive Committee the power to commit the whole Board of Directors in the matter of the subway contract at that time? A. The reason was that in case it became necessary for us to formulate the proposition to submit to the Public Service Commission, that it would be easier to get a meeting of the Executive Committee than of the full Board; and for that reason the Board decided to give that power in that particular case to the Executive Committee.

Q. When you went down to see the Mayor at St. James, did you

believe you were acting under the power given by the Board of Directors to the Executive Committee? A. I wasn't —

Q. Did you believe you were acting under that power? A. I am not the Executive Committee.

Q. You are the President of it? A. I am the Chairman of the Executive Committee.

Q. Did you believe you were acting within the power given, or within the spirit of that power? A. So far as my membership in that Committee was concerned, why, certainly.

Q. Mr. Freedman knew you were going down, didn't he? A. I don't remember.

Q. Can't you remember that? A. No.

Q. Did you tell Mr. Freedman you were going down to see the Mayor? A. I don't know.

Q. Can't you remember? A. No.

Q. Is your memory good or bad? A. Do we have to go through that again?

Q. I notice your memory changes; I will change the form of question: Is your memory, on that question good or bad? A. The Chairman said a while ago that, for $100,000 I ought to have a better memory. If I was paid to remember details of hundreds of meetings, nights and days following one another, and I could do all that, there wouldn't be enough money to pay me.

Q. Are you paid $100,000 for having a good memory or a good forgettory? A. For neither. I am supposed to be paid for exercising a certain amount of judgment at a given time; and we have records for important things. I don't undertake to burden my memory with the details of meetings.

Q. Did you have any record of that meeting with the Mayor? A. Yes.

Q. You have a memorandum? — Let's see it. A. It is in the record.

Q. No, it is partly in the record. A. We will introduce it all.

Q. If that matter was so important that you would make a memorandum of the conversation, can't you tell me whether or not you spoke to Mr. Freedman before you went down there? A. I don't know whether I should have spoken to Mr. Freedman.

Q. On the matter of policy? A. No more than any other time.

Q. I was suggesting on the matter of policy. The Mayor was the worst enemy of the Company — at least he said he was — and you went into the enemy's camp. You don't mean to say that you went there on your initiative, without talking to the Board of Directors? A. As far as I recollect, I went on my own initiative.

Q. Didn't anybody know you were going? A. I don't remember whether the Executive Committee or whether the Board did.

Q. Did the Mayor meet Mr. Freedman after you saw him? A. Never to my knowledge.

Q. Did you speak with Mr. Berwind about going down there? A. I don't remember that I did.

Q. And you don't remember that you didn't? A. No, sir. If I was with him and thought of it I would tell any of them.

Q. It was your habit to take your Executive Committee, and even your Board of Directors, into your confidence? A. Yes; that was my habit.

Q. Would you do the extraordinary thing, involving possibly policy, wisdom, discretion, or unwisdom and indiscretion, of going to your ancient enemy without conferring with members of the Board? A. If it was convenient to do so, I would do so.

Q. And hiring a lawyer to go down with you, and hiring the Mayor's old partner to help you? A. Who do you mean?

Q. Mr. Grout. A. Grout didn't go down with me.

Q. Didn't Grout help you? A. Yes.

Q. What did he help you do? A. Mr. Grout, as I recollect the situation, as I testified before, was suggested to me because he had been so long in the City service.

Q. I didn't ask you why you got him. But what did he help you do? A. He made a study of our proposition, and I think he talked with the Mayor. I am not sure.

Q. Now you say you think he talked with the Mayor; don't you know? A. I think he did.

Q. But don't you know? I didn't say "think." A. I didn't hear him talk to the Mayor.

Q. Did he tell you that he had? A. Yes.

Q. Then why do you say you "think?" A. I believe the Mayor —

Q. What did he say to the Mayor? A. I don't know.

Q. Did he tell you what he said to the Mayor? A. I suppose so.

Q. Did he? Not what you suppose; did he? A. I don't know what he said to the Mayor.

Q. Did he tell you what he said to the Mayor? A. He told me he had a talk with the Mayor.

Q. Did he tell you what he said to the Mayor? A. No.

Q. Did you ask him what he said to the Mayor? A. Yes.

Q. What did he answer to you? A. I can't tell.

Q. Why can't you tell? A. Because I don't remember.

Q. Is your memory on that subject good or bad? A. I suppose my memory on that subject, if I ought to remember what you want to me to remember, ought to be bad, because I don't remember.

Senator Thompson.— You mean by that you won't remember. A. A man can't very well — at least, I can't very well, control my memory. I can only tell you of my own knowledge what occurs to my mind in response to your questions.

Q. (By Mr. Moss). To be sure; did Mr. Grout tell you that he had seen the Mayor before you saw him? A. Before I saw the Mayor?

Q. Yes. A. I don't remember that.

Q. You don't remember whether it was before or after? A. I don't remember.

Q. Did Mr. Grout prepare the way for you or did you prepare the way for him? A. There was no preparation of my way for Mr. Grout; I will say that. Mr. Towne arranged the meeting between the Mayor and myself; I don't know that Mr. Grout had anything to do with that.

Q. Well, what was the subject upon which Mr. Grout talked with the Mayor, according to his report to you? A. It was in regard to the general subway situation, and the Mayor's attitude toward our Company, and our views as to the proper solution of the subway question.

Q. Did you ever see the Mayor at the same time that you saw Mr. Wilcox? A. I don't remember seeing them together, and still, I may have.

Q. When you talked with the Mayor on the 22nd of April,

was that talk a continuation of any subject that had been previously discussed with anyone? A. No. The only —

Q. I only asked you whether it was or not; you say no. Do you say the conversation was on the 24th? A. I wouldn't remember if it weren't for that memorandum.

Senator Thompson.— The memorandum showed it was on the 24th, and Mr. Shonts one time testified that it was on Sunday, and the 24th was Sunday. A. I know it was a Sunday.

Senator Thompson.— We kind of agreed it was the 22nd; but it was the 24th. A. I think that was because Mr. Towne said he bought the wine on the 22nd.

Q. (By Mr. Moss.) Will you please throw your powers of association together and see if you can't recall a meeting with the Mayor and Mr. Wilcox at any time? A. Either before or after this?

Q. Any time. I want to know where it was. A. Yes, I am thinking; but I have no distinct recollection of seeing them together; and still, I may have seen them together; I won't say that I didn't.

Q. Now let me read to you on Page 61 of your Minute Book; this is the book you just handed me a few moments ago.

> "A regular meeting of the Executive Committe of the Interborough Rapid Transit Company was held at the office of the Company, No. 165 Broadway, New York City, on Wednesday, April 20th, at 11 o'clock A. M., pursuant to notice given in accordance with the by-laws.
>
> "Present, Mr. Edward J. Berwind, Mr. Andrew Freedman, Mr. William A. Reed, Mr. Theodore P. Shonts, Mr. Cornelius Vanderbilt; Messrs. Frank Headly and William Barkley Parsons were also present. Mr. Theodore P. Shonts in the Chair.
>
> "Minutes of the regular meeting of this committee held on Wednesday, April 13th, 1910, were read and approved."

Now, at that meeting, did you tell your fellow directors that you intended to call on the Mayor? A. I don't remember; maybe I did.

Q. May be you did? A. Yes.

Q. Did you ask their advice? A. If I told them; that is a matter always for general discussion.

Q. Do you mean to say that you went down and saw the Mayor without advising them, even though you had a meeting of your Executive Committee four days before you went down? A. If the matter came up after that, and I thought it was best to go, yes; I would certainly go.

Q. You know Mr. Towne testified that he had been arranging that meeting for different places; different places had been suggested, and it took several days to settle it. A. I have no recollection on the subject.

> "Q. The Chairman announced to the Committee the result of his conference with Mayor Gaynor, and Chairman Wilcox of the Public Service Commission, on Tuesday, the 19th inst."

Where did you see Mayor Gaynor on Tuesday, the 19th inst.? A. I don't remember.

Q. Where did you see Mr. Gaynor and Mr. Wilcox on Tuesday, the 19th inst.? A. I say, I don't remember.

Q. Do you remember now that you did? A. No.

Q. Several times, Mr. Shonts, you have testified that the only time you ever saw Mr. Gaynor or spoke to him, before the 22nd or 24th of April, was on the first of January, when you paid what was called your "party call." A. Yes; shortly after that was to the best of my recollection, and it is yet; although, of course, that is my report; that is the object of the minutes. If my memory was infallible, what is the use of keeping minutes?

Q. Somebody else might know something. Do you mean to say your memory is not infallible? A. I have never claimed that it was.

Q. Mr. Shonts, in that period of time, around there, what was there about your railroad that was more important than this thing that was coming to a head and which focused in your visit to the Mayor at St. James? What was there in your railroad more important? A. There wasn't anything more important than the relations which our Company was going to bear to the City.

Q. And what was more important than getting rid of the hostility of the Mayor? A. There wasn't anything more important than trying to remove all unjust prejudice from the minds of the Mayor and every other citizen.

Q. And what was there in the business of this Company that ought to make a sharper and a clearer mark in your memory than meetings with the Mayor? A. I don't know of anything, and yet, I don't remember.

Q. You notice this was on a Tuesday? A. Yes.

Q. And evidently the Tuesday preceding the Sunday when you didn't have the wine? Well, let's go on:

> "The Chairman announced to the Committee the result of his conference with Mayor Gaynor, and Chairman Wilcox of the Public Service Commission on Tuesday, the 19th inst., at which conference he explained to them that during the early part of last year the Interborough Rapid Transit Company, feeling that the necessity for increased rapid transit facilities was urgent and that the City had no funds for that purpose, proposed to construct with private capital, without first having made any provision for financing the undertaking but believing that the Company could do so, certain East and West side lines constituting logical extensions of the present subway; which proposition was rejected by the Public Service Commission. That subsequently, the effects of the panic having subsided somewhat, still with the understanding that the City would not for sometime be in a position to finance additional subways, the Company, after first entering into tentative financial arrangements with Messrs. J. P. Morgan & Company, made another proposition, amended to conform to certain suggestions of the Public Service Commission, to construct four tracks up Madison Avenue and four tracks down Seventh Avenue; which proposition was also rejected. In the meantime, they explained — (that is, the Mayor and Wilcox) — the situation had changed very materially. The City had in sight funds with which to construct its own subways, and a Board of Estimate and Apportionment had been elected on the platform pledged to City construction; in consequence of which, and the fur-

ther fact that both of its previous propositions had been rejected, the Interborough Company did not now consider that its duty required that it sacrifice the profits of its present subway by the construction of new subways with private capital.

" He explained further — (that is, you) — while most of the proposed routes might be profitable if they could be built on the same basis of cost as the present subway, by reason of the increased cost of materials and labor, and the more burdensome method of construction which must now prevail, the original cost would be much greater; and in addition to this the rate of private capital would be more than one and three quarters per cent. over the rate of interest which the present subway carries.

" As a result of which added burdens the opportunity for additional earnings from the new subways would be greatly reduced; that the preparation of many estimates from various points of view had demonstrated that a scheme as comprehensive as had been tentatively discussed by the Mayor and Chairman Wilcox, was so great that the Company feared to undertake the work with private capital; and that the only proposition that might be framed which would break even would be to do the work with City money in order to get the benefit of the City's lower rate of interest.

" The proposition of the Mayor was, as he stated, that the Interborough should carry out its own logical extensions with private capital and that any additional construction, such as the Broadway-Lafayette route, for example, should be financed by the City.

" He stated that as the conference was about to break up the Mayor requested him to prepare a proposition which would be satisfactory to the Interborough Board, and suggested that both he and Chairman Wilcox submit their plans to him, the Mayor, as arbitrator.

" As a result of this conference, and the suggestions made, he submitted to the Committee for discussion a letter from General Manager Headley — (that is what we have just had here, I guess) — embodying certain plans and estimates pre-

pared by himself and the engineering staff as a basis for discussion, with a view to ascertaining what general policy could be decided upon. Inasmuch, however, as the subject was too large to be dealt with summarily, it was, on motion duly seconded, resolved, That the Secretary be, and he hereby is, directed to forward a copy of the plans and estimates prepared by General-Manager Headley at the instance of the President, to each member of the Executive Committee for a further discussion at a subsequent meeting to be called by the Chairman.

"There being no further business, on motion duly seconded, the meeting adjourned."

Senator Thompson.— Still harmonious? A. Still harmonious.

Q. (By Mr. Moss.) Now, let me ask you, when you went down to St. James, you didn't take Willcox with you, did you? A. No.

Q. He wasn't at any conference there? A. No.

Q. When you went down to St. James, you stopped on the way at the house of Mr. Hawley, didn't you? A. Yes, sir.

Q. Here, on the 21st of April, is a special meeting of the Executive Committee. Present, Edward J. Berwind, Andrew Freedman, William A. Reid, Theodore P. Shonts, Cornelius Vanderbilt. Mr. Edwin Hawley was present by invitation of the President. That is three days before you called on the Mayor. What did you have Mr. Hawley there for? A. I don't know. I don't recall.

Q. Messrs. William Barclay Parsons and DeLancy Nicoll were also present. Why did you invite them? A. Mr. Nicoll is our consulting attorney.

Q. Why did you invite him? A. I don't remember at this particular time.

Q. The last item of that meeting is "The matter of constructing new subways was further discussed and the meeting adjourned subject to call of the chair." It doesn't say what the discussion was about. What was the discussion of new subways at that meeting on the 21st? A. I suppose it was the same old proposition.

Q. You suppose but you don't remember? A. I don't remember.

Q. Why wasn't it entered, do you know? A. You will have to ask the Secretary. I suppose there were no new features and no action to be taken.

Q. He might have been told. A. No.

Q. He might have had good sense? A. There is no reason why he shouldn't have put that down.

Senator Thompson.— Do you keep a stenographer present? A. No.

Q. Why not? A. I don't know anybody that does. I never heard of it being done.

Q. (By Mr. Moss.) How did you get this long affair that I read you out of the meeting of April 20, giving the report of your conference with the Mayor and Willcox? A. That is a matter you would have to ask the Secretary about.

Q. Did you dictate it? A. I reported the substance, just as it says, to the Executive Committee.

Q. Who took it down? A. Mr. Fischer.

Q. Is he a stenographer? A. He doesn't call himself a stenographer.

Q. He can do it? A. In a way. Enough to make up the minutes. While he doesn't keep a record of full discussions because he isn't quick enough, he does keep enough record to make up his minutes from.

Q. When you have Mr. Nicoll attend a meeting of the Board of Directors, you expect to pay him, don't you? A. Oh, yes.

Q. And you paid him for attending that meeting? A. I have no doubt.

Senator Thompson.— He never forgot that, did he?

Q. (By Mr. Moss.) And you pay him for his advice do you? A. We do.

Q. What was there in any of the business recorded in this meeting here that needed the advice of De Lancy Nicoll? A. I have no recollection of the specific problem that we had him there

on, any more than the engineering problem that Mr. Parsons was there for.

Q. What was that? A. I say I have no recollection of the especific engineering problem to be discussed for which we had Mr. Parsons. Mr. Parsons is our consulting engineer.

Q. The same as Mr. Nicoll is your consulting lawyer? A. Yes.

Q. You have regular engineers for regular business and regular counsel for regular work, good counsel? A. We think so.

Q. Excellent counsel? A. We think so.

Q. Mr. Quackenbush and Mr. Rogers —

Mr. Quackenbush.— I will admit it myself.

Q. (By Mr. Moss.) And I suppose Mr. Parsons had to be paid for this attendance too? A. No, Mr. Parsons was under a regular retainer.

Q. If Mr. Quackenbush had attended, that general retainer would hove covered him just as parsons? A. Yes.

Q. Well, now, I am going to call your attention to all of the business that was presented at this meeting where you had Mr. Hawley present by invitation, Mr. Parsons, Mr. Headley and Mr. Nicoll.

Now the first piece of business, listen to it, please:

> "The chairman submitted an offer of twenty-five hundred dollars per annum for the rental of eighteen hundred square feet of property at the northwest corner of division and Allen Street under the elevated railroad for a term of eighteen years, building to be placed thereon to be of fireproof material.
>
> "On motion duly seconded it was resolved that the lease of the property above referred to for a period of eighteen years at a rental of twenty-five hundred dollars per annum, subject to the restrictions specified, be and the same hereby is approved, ratified and confirmed."

You certainly didn't have Mr. Nicoll there for that business? A. No.

Q. Nor Mr. Parsons? A. No.

Q. Nor Mr. Headley? A. No.

Q. Nor Mr. Hawley? A. Nor Mr. Hawley.

Q. The next piece of business, "The matter of constructing new subways," was further discussed. Did you have Mr. Nicoll there on that business? A. Undoubtedly.

Q. And Mr. Hawley? A. Undoubtedly.

Q. And Mr. Parsons? A. Yes.

Q. And Mr. Headley? A. Yes.

Q. The next business is "and the meeting adjourned subject to the call of the Chairman." A. What was the date of that meeting? Q. April 21. The next Executive Committee meeting is on the 27th of April, with no special people present, but it contains this :

> "The President brought up the question of preparing and submitting to the Public Service Commission a separate proposition covering Manhattan Elevated Railway improvements and read a statement dated April 26, 1910, prepared at his instance, by Vice-president and General Manager, Frank Headley, showing estimated cost of construction, gross and net earnings, operating expenses and fixed charges. These improvements he stated consists of third-tracking the Second, Third and Ninth avenue elevated lines, extending the Third Avenue elevated from Pelham Avenue station to Webster Avenue easterly on Gun Hill Road and northerly on White Plains Avenue, Becker Avenue and the Eighth Avenue elevated from 149th Street by way of McComhsdam Bridge and Jerome Avenue to 194th Street, all of which improvements he stated could be completed and put in operation within two years from the commencement of the work.
>
> "He also suggested that the operations of the Steinway Tunnel from Jackson Avenue, Long Island City, to Park Avenue and 42d Street, in the Borough of Manhattan, be included in this proposition.
>
> "After discussion, it was on motion duly seconded, resolved that the President be and he hereby is authorized to prepare such form of proposal to the Public Service Commission as he deems wise for the construction and operation

of the improvements above described, submitting the same to this committee for its approval. There being no further business on motion duly seconded, the meeting adjourned."

Q. Now, that is three days after the St. James meeting. A. This is, as I understand, all elevated improvements.

Q. All elevated improvements except the Steinway Tunnel. Was that something you arrived at in your conversation with the mayor? A. No. The conversation with the mayor, the best recollection I can give you is what I dictated the next day, I suppose the next day, after I was there, and in which I requested him to appoint someone in whom he had confidence to study our subway proposition. In the meantime in order to help relieve the situation, I brought up as I had on several occasions, the question of making an independent proposition on the third-tracking and getting some relief.

Senator Thompson.— I see here that on the 22d of March you made a writing which got into Mr. Wilcox' hands the same day. On that day he made some pencil memorandums on that particular writing and so did you. A. Which would indicate that we were together.

Senator Thompson.— You were together that evening at his house. A. That is my recollection.

Senator Thompson.— And then the next day you had a meeting of the Executive Committee at eleven o'clock and a meeting of the Board of Directors at 11:15 and at that meeting of the Board of Directors this subject was brought up and discussed and the Executive Committee authorized to go ahead with power to act and on that same day you wrote another letter, just like that letter of the 22d except it embodied practically all of those interlineations which appear in lead pencil on the one of the day before. A. Yes.

Senator Thompson.— There doesn't appear to be any other meeting at which subways were discussed again until the 20th of April so far as I can find. I looked through the book. Do you know of any other? A. If it doesn't show, we didn't have any. It would show if we had.

Q. Then you had one on the 20th of April, at which it was brought up—I think it was a meeting of the Executive Committee. A meeting that you had with the mayor and Mr. Wilcox the day before, the 19th, was brought to the attention of the Board of Directors. A. Or Executive Committee, whichever that was.

Senator Thompson.— On the 21st you had a meeting of the Executive Board at which you called in Mr. Hawley and Mr. Nicoll and Engineer Parson and you discussed it some more. A. Yes.

Senator Thompson.— Now, after that there doesn't appear to be any meeting of the Board of Directors at which this matter was discussed. I looked as far as the 15th of May. I didn't see anything. Do you know of any? A. Not except what is there.

Senator Thompson.— What I would like to know is, this meeting that you had with Chairman Willcox was considered quite important if you took it up with the Board of Directors. A. Yes.

Senator Thompson.— It must have been. And the meeting with Mayor Gaynor and Mr. Willcox on the 19th of April must have been considered very important to have been a subject of a Directors' meeting. Now, why wasn't something said at a subsequent meeting of the Board of Directors in relation to that talk you had with Gaynor down at St. James on the 24th? A. I think I did report that.

Senator Thompson.— Where are the minutes of the Board of Directors? A. I don't know, but that would be my recollection.

Senator Thompson.— I wondered if you had any explanations as to why that didn't go on the minutes. A. It ought to have been on and I think it is on.

Q. (By Mr. Moss.) Now, Mr. Shonts, perhaps we have got our association fibres working better. Tell me where was that meeting with the mayor and Mr. Willcox on the 19th of April? A. It is very hazy even after all this stimulation to recollect my recollection fibers.

Q. Not recollection fibers, association fibers. A. And still it is beginning to dawn on me in that hazy way that Chairman Will-

cox and I called on the mayor, but I am not sure. That is what is floating through my mind.

Q. Where was it? A. At the mayor's office, if we did.

Q. If you had visited the mayor with Chairman Willcox on the 19th of April, why did you need dear old mirabeau Townes to take you down to St. James on the 24th? A. I don't know that I needed him to take me down.

Q. Or to introduce you? A. Or to introduce me.

Q. Or to ease it up. A. It wasn't for the purpose of easement in that sense. He was retained to study and submit to the mayor our views as to the wisdom or unwisdom.

Q. You told us you left him sitting in the buggy. That turned out to be an eight thousand dollar limousine. A. No, it wasn't a limousine at all. It was an open car. It was only five thousand.

Q. Say, we are getting some association fibers at work. A. Association fibers have been thrashed out here.

Q. What was the necessity of going down to the mayor's and taking that roundabout trip, twenty-five miles out of the way to call upon Hawley whom you had just had at the meeting by the way. What was the information? A. I will tell you how reliable human memory is. I had forgotten that Campbell went along until I was reminded. Campbell went along. Campbell tells me that we went around there to leave my daughter to a friend she wanted to visit at Iselin.

Q. Was your daughter in that car? A. I don't remember.

Q. Did you leave your deughter with Edward Hawley? A. No.

Q. What were they negotiating Inter.-Met. stocks at that time? A. You will have to ask one of them.

Q. Were you buying Inter.-Met. bonds yourself? A. No.

Q. What did you buy with that hundred thousand dollars, or what did you hold up with the hundred thousand? A. That one hundred and twenty-five, you mean. That was supplied on some securities.

Q. Wasn't that Inter.-Met.? A. Not bonds.

Q. What was it, stock? A. Preferred stock.

Q. You people were very much interested in Inter.-Met. stock weren't you? A. I have always been interested in any security.

Q. It was being quoted pretty low, wasn't it? A. Not so very.

Q. Pretty low, I said. What put the blood into Inter.-Met.? What helped rejuvenate it? A. I think that what had the most to do with the building up of the Inter.-Met. has been the operations of myself—I have to throw bouquets at myself and my associates, but in place of being almost on the verge of bankruptcy, we have accumulated a surplus of about eighteen million dollars.

Q. Out of what? A. Earnings.

Q. What property, the Interborough? The Interborough blood is flowing into Inter.-Met. and the insiders have been buying up Inter.-Met., Freedman some, Edwin Hawley some. A. I don't know. Shonts had some I know.

Q. How many people were in the Inter.-Met. pool? A. There wasn't any that I know of.

Q. Was there any one interested in the account you had down in Barney's beside yourself? A. No, sir.

Q. Were you interested in any other accounts but that one? A. No, sir.

Q. Didn't you have any interests in any other account? A. No, I didn't have any interest in anybody else's account.

Q. Didn't you have any interest in any other account besides the one that you put the one hundred and twenty-five into? A. Do you mean did I have any other account?

Q. Where? A. It was at that time in Thomas & Company.

Q. Only one? A. Yes.

Q. That is the only one? A. Yes.

Q. Was that running at the same time you were getting this one hundred twenty-five thousand? A. I imagine it was. I don't remember.

Q. And did that have some Inter.-Met. in it? A. It did.

Q. How did you hold that one up? A. What do you mean?

Q. You didn't have to put off any of your one hundred twenty-five thousand in this other account? A. Nor in this other, but I did.

Q. You did have to because Thomas sold some out? A. No, he didn't.

Q. Barney sold out a lot of it? A. Not of mine.

Q. Well, you testified and I read your testimony and your tes-

timony shows that Mr. Barney had sold out some of your securities. A. Not Inter.-Met.

Q. And with the proceeds of that sale your one hundred twenty-five thousand you were able to save it so you didn't have to sell any more? A. You didn't read that right.

Q. Was it other securities? A. Other securities entirely.

Q. Were there any Inter.-Mets. in the Thomas account? A. Yes, sir.

Q. Were these securities in Barney's, any of the related Rapid Transit securities? A. What do you mean, related?

Q. Any of the companies that are bound into this Inter.-Met. Interborough. The Barney securities were securities of the railroad in which you were employed in some shape or other? A. I had two of those. I didn't have any other except those two.

Q. Your securities were all of that class? A. Oh, no. I understood you to ask me if I had any other securities of the Inter-related Companies beside Interborough and Metropolitan. Was that your question?

Q. Yes. A. I said yes I had some Interborough Rapid Transit.

Q. Did you have that in Barney's? A. Yes.

Q. Was that some of the stuff that was in there when you put the one hundred twenty-five thousand in? A. Yes.

Q. What company was that? A. Interborough Rapid Transit.

Senator Thompson.— What is this Inter.-Met.? A. The Interborough Rapid Transit is the company that operates the elevated and subway —

Senator Thompson.— I have found that out. A. Then, there was the old Met. Securities Company.

Senator Thompson.— Was that a holding company or an operating company?

Mr. Quackenbush.— Mr. Shonts, you said "Securities Company." It ought to be Metropolitan Street Railways. A. Then, they organized the Interborough-Metropolitan Holding Company, and they took from the Interborough Rapid Transit the Interbor-

ough portion and they took the word "Metropolitan" from it. (That was before I came there.) They organized this holding company called the Interborough-Metropolitan.

Senator Thompson.— Then the Interborough-Metropolitan Company exists only for the purpose of holding portions of the stock of these two corporations? A. Yes.

Senator Thompson.— Are you an officer of that company? A. Yes.

Senator Thompson.— President? A. Yes.

Senator Thompson.— Does that Company report to the Public Service Commission? A. It does not. It is a holding company.

Senator Thompson. — Don't you think a holding company ought to report to the Public Service Commission if the operating company is required to report? A. If the operating companies report, I don't see any necessity for the holding company to report, because they have all the data from the operating companies.

Mr. Quackenbush.— Let me make a suggestion to the Chairman, because I assume he has some legislation in mind. The Amendments of 1910 to the Public Service Commission Law provided that the holding company should report to the Public Service Commission in respect to their relations to companies which were under the law obliged to report. I think that is what you have in mind now. Mr. Shonts has overlooked that. I didn't want Mr. Shonts to leave the record with a mistake.

Senator Thompson.— I don't want to cool those things off that you and Mr. Moss have been talking about.

Mr. Moss.— Mr. Chairman, my mental operations are not upset by a question or two from the Chairman. I am glad to have him break in and give me a rest.

Q. Mr. Shonts, were you ever in Europe? A. Yes, sir.

Q. When? A. I was in Europe in 1914. I was in Europe in 1913. I had not been in Europe before since the birth of my grandson, which, I think, was in 1908.

Q. Well, were you in London in 1913? A. Yes.

Q. Did you meet anybody there that you knew, any of your railroad associates? A. I always meet people I know everywhere.

Q. Your railroad associates, your Interborough associates? A. No.

Q. Did you meet Mr. Freedman? A. I don't think he was in Europe that year at all.

Q. You didn't meet him? A. No.

Q. Did you meet him in 1914? A. No.

Q. Did you meet Mr. Hyde over there? A. I don't know him at all, never met him.

Q. Charles H. Hyde, I mean? A. I never met him.

Q. Do you know whether or not Mr. Hyde was over there? A. No.

Q. Did you meet any of the Board of Directors of the Interborough Company in Europe? A. I don't think so. I don't remember having met anyone in either year.

Q. Now, Mr. Shonts, this report of your conference with the Mayor at his office on the 19th of April seems to cover the very matters that you have hitherto told us were discussed with the Mayor at St. James. A. Only in part. The chief thing I was after was to get the Mayor to delegate somebody to come to our offices and study our reports and formulate for him an independent report in which he had confidence.

Q. Did you ask him to do that at this conference on the 19th? A. No, I don't think so.

Senator Thompson.— If he got big enough to be an arbitrator on the 19th and to handle all this thing the way he did, why there wouldn't be very much trouble about getting him to send a couple of men over to your office, was there? He seems to have been well enough acquainted with you so that he was going to run the whole thing. A. I don't know that that was so.

Senator Thompson.— That is what your minutes show. You didn't need to go to a lot of eclat with Mr. Townes to go down and see him to get him to send a couple of men to you.

Mr. Moss.— Doesn't that look just a little bit far-fetched, Mr. Shonts? A. The best answer I can give to that is to read my re-

port, which was made. I never thought anybody would have seen it but myself, unless I read it to the Board, which I think I did. It was set forth as an expression of mine. That is in evidence.

Q. You say you think that you read that report? Did you or did you not? A. I really don't remember.

Q. Now, when you went down there to City Hall on the 19th of April, who suggested that you should go? A. Mr. Counsel, it passed from my mind. I don't know.

Q. Weren't you a little afraid to go? A. I didn't have any shrinking feeling, exactly.

Q. There was no reason why you shouldn't have gone absolutely alone, was there? A. No, there wasn't any reason, and I talked alone. That is to say, Mr. Towne didn't participate and Mr. Campbell didn't participate.

Q. Had you seen the Mayor from the 1st of January, 1910, to the 19th of April, 1910? A. Now, you see, I didn't remember having seen him between the time I called on him at St. James. I saw the Mayor once. I don't know when it was. It was in regard to buss franchises with some gentleman at his office. Whether that was between January and April or after, I don't remember. That occurs to me.

Q. When you opened up your conversation with the Mayor on the 19th of April, did you find him in a friendly mood? A. He was always very polite to me when I met him.

Q. But I said friendly. A. I can't tell.

Q. Were you surprised at his suggestion that he would be an arbitrator? A. Well, I don't think anybody took that very seriously.

Q. Didn't take it seriously? A. I don't think I wanted him to arbitrate, and I don't think Mr. Willcox did.

Q. Did he mean it? A. I don't know.

Senator Thompson.— That is in the minutes. That is important if it is in the minutes. A. Is it?

Senator Thompson.— Well, I wonder.

Q. (By Mr. Moss) You took it seriously for some purposes, didn't you? Let us return to the minutes and see what it says:

"He stated that as the conference was about to break up, the Mayor requested him to prepare a proposition which would be satisfactory to the Interborough Board, and suggested that both he and Chairman Willcox submit their plans to him, the Mayor, as arbitrator." Did you consider that to be a serious suggestion? A. I can only answer for my own part of it. I wouldn't have selected the Mayor as an arbitrator on a matter of that kind.

Senator Thompson.— That is, you wouldn't until you knew what he was going to do.

Q. (By Mr. Moss) Well, you went right to work and prepared some plans? A. No doubt of it.

Q. And those plans were sent to the Mayor, weren't they? A. There were some plans sent to the Mayor on July 5.

Q. And on July 5, the Mayor sent them to the Commissioners, didn't he? A. I understand so.

Q. He was perfectly willing to act as an arbitrator, wasn't he? A. I don't see the connection.

Q. Why did you send the plans to him? A. Because he had been in this conference you refer to, I suppose.

Q. Then, the thing was strongly in your mind, wasn't it? A. What was strongly in my mind?

Q. That he wanted to be arbitrator. A. No, that wasn't.

Q. But, it was strong enough in your mind for you to send the plans to him. A. I sent a copy of the proposition that went to the Public Service Commission to him.

Q. The copy that went to the Public Service Commission went sometime afterwards? A. Oh, no.

Q. So it appears. A. My recollection is that they both went at the same time.

Q. Well, the Mayor sent his copy to the Commissioners, didn't he? Didn't he, Mr. Willcox?

Mr. Willcox.— The Mayor sent his letter under date of the 6th of July, and the Interborough Company sent the same letter. One was addressed to the Mayor and one was addressed to me as Chairman of the Commission.

Q. The question is, didn't the Mayor send the plans to you?

Mr. Willcox.— He sent the letter the same day he received it, and we the same day received a letter from Mr. Shonts.

Q. Well, did you hear from the Mayor to the effect that he was displeased with this proposition because it called for the use of city money? A. My recollection is that it was the Public Service Commission that acted on the letter.

Q. The Public Service Commission acted, but did the Mayor say a word against your proposal, because it contemplated the use of city money? A. I don't remember that we heard from the Mayor.

Q. Didn't hear anything from him at all? A. I don't remember that we did.

Q. Although the last plans or proposals before that had been for private capital? Do you remember that? A. That was in 1909 and the tentative plan of 1910.

Q. Did the Mayor call it to your atttention at all that now you were proposing to use a large amount of city capital? A. I think from what you stated there, or what you read there, that what the Mayor wanted us to do was to build what they called the normal extensions with private capital, that is to say, down the West side and up the East side, and that if any additions were built, such as the Broadway or Lafayette Loop, that that should be built with city money. I think that is what he had in his mind. I gather that from what you read from my report.

Q. Were you, during this period in March and April, 1910, having conferences with Mr. Morgan or any of his partners? A. I suppose so.

Q. Well now, see if you can't get further than supposing so. A. What I mean is this—we didn't make any serious offer between our offer of June, 1909, supplemented by some changes in September, 1909, and this offer of July 5, 1910. When we made the first offer of 1909, we had no provision for capital. We took our chances, and the second—

Q. But you conferred with Mr. Morgan then? A. Not on the first.

Q. What do you call the first? A. March.

Q. No, that was preliminary. Then you got to June and you took Mr. Morgan into your confidence and exchanged letters with him frequently? A. I don't remember about exchanging letters frequently, but we were always in touch with each other.

Q. Always in touch? A. Yes.

Q. On June 24 Morgan to Shonts, June 25 Shonts to Morgan, June 26 Morgan to Shonts, June 29 Shonts to Morgan. They went as rapidly as that. A. When was that?

Q. 1909. Then we come to the period of March and April, 1910. Now, what conferences did you have with Mr. Morgan during March and April, 1910? A. I don't remember.

Q. You talked with him, didn't you? A. As I say we kept in constant touch.

Q. In March and April, 1910? A. I suppose so.

Q. That was when these proposals were being discussed and shaped up—. A. There wasn't any necessity—.

Q. I didn't ask about any necessity. A. I don't remember what days and what weeks and what months I met Mr. Morgan or I called on him or we exchanged letters, but I aimed to keep in touch with Mr. Morgan every time, and would do so before we would make any commitment of our company, to see that the terms were such as he was willing to finance.

Senator Thompson.— What do you mean by commitment? A. I mean such offers as of June, 1909, and of July 5, 1910.

Senator Thompson.— How about March 22? A. Not necessarily that at all.

Senator Thompson.— Why not necessarily? A. Because it wasn't a proposition.

Senator Thompson.— Why wasn't it a proposition?? A. Because it wasn't.

Senator Thompson.— Why did you say so in it? A. I explained that this morning, in order to save time, at the request of the Chairman.

Senator Thompson.— Why didn't you put that in your letter? A. In what letter?

Senator Thompson.— In the letter that you said was the proposition of March 22, 1910. A. What was the object of putting it in the letter?

Senator Thompson.— Because, why not put the truth in the letter? You generally did, didn't you? A. There is nothing untruthful in the letter.

Senator Thompson.— You say you used the word proposition, and now you say that isn't so. A. It would have been so if it had been signed, but it wasn't signed.

Senator Thompson.— What is the difference between signing it and taking it to Mr. Willcox and conferring about it? He was acting in his official capacity wasn't he? A. I suppose he was.

Senator Thompson.— You knew he was just the same as you were. A. We were trying to see if there was a basis on which we could agree that would be sufficiently profitable on its face to enable us to secure private capital.

Senator Thompson.— So much so that you took it back to the Board of Directors the next day and got power to act. A. But we didn't act.

Senator Thompson.— But you got power to? A. Certainly we got power to.

Q. (By Mr. Moss). You didn't take power without seeing your banker, did you? A. Certainly.

Q. Did you? A. Why certainly.

Q. You did? You took that power from the Executive Committee without knowing whether your banker would stand behind it? A. I don't see any relationship between having power given an Executive Committee by a Board and bankers.

Q. Your propositions, your engineering force at work, your auditor at work, revised propositions put on the file, everything shaped up, ready to be signed, and you hadn't conferred with your

bankers whether they would stand behind you or not? A. I don't say I didn't, but I say there is no relation between them.

Q. I think there is. A. That is just a difference of opinion.

Q. I don't think you really differ with my opinion. A. I am telling you what I think, Mr. Moss.

Q. I am thinking that as good a businessman as you are, you weren't stabbing in the dark and you weren't beating the air and you knew what you were doing, and you never got up those revised propositions without knowing that you had your banker behind you, for it required you to put up a lot of money. A. Before we had ever submitted those things, we had the backing of the banker, but we never did submit them.

Q. You were in contact with the Morgans all the time, weren't you? A. Whenever it was necessary.

Q. You weren't hiding anything from them? A. No, we weren't hiding anything from them.

Senator Thompson.— What was the object of making that without signing it? A. I went over that this morning. I will go over it again, if you want me to.

Senator Thompson.— I would like you to. A. It was at the suggestion of Chairman Willcox.

Senator Thompson.— He suggested that you did not sign it? A. No, it was at the suggestion of Chairman Willcox that we started in after our proposition of June, 1909—

Senator Thompson.— But, why didn't you sign the letter? A. Because we never got to an agreement.

Senator Thompson.— You kept your signature off the letter, because you didn't want it to be considered as an offer? A. It wasn't an agreement. We hadn't reached an agreement.

Senator Thompson.— I remember in 1913, you had a proposition to give a contract to Mr. Stevens for ten per cent. commission or fifteeen per cent. commission and you sent a letter to the Public Service Commission accompanying that stuff, and you did not sign that letter. Was that for the same reason? A. I didn't sign what letter?

Senator Thompson.— The letter that was up to the Public Service Commission with that Stevens contract for approval. A. In the first place there wasn't any Stevens contract, and in the second place, the letter I sent to the Public Service Commission was signed.

Senator Thompson.— I may be in error about that.

Q. (By Mr. Moss): Did you tell Mr. Morgan about your call on the Mayor on the 19th of April? A. I don't remember.

Q. Did you tell him of your call on the Mayor on the 24th of April? A. I don't remember. If it occurred to me, I did.

Q. Did you tell Mr. Morgan that you had had conferences with the Mayor which looked as though his hostile attitude might be improved? A. I don't remember of telling him that.

Q. Did you have any conferences with Mr. Morgan in which you told him in substance that you had a tentative proposition for doing work with the company's money in 1910, just as you had had in 1909? A. I don't remember, though I may have.

Q. Isn't it your best recollection that you told him that you were renewing, or making some kind of a varied proposition of the same sort in 1910 that you had made in 1909? A. I haven't any independent recollection of it.

Q. Haven't you any kind of a recollection of it? A. No.

Q. Did Mr. Morgan suggest to you that there was a cheaper way of doing it? A. He did not nor did anybody else.

Q. There was, wasn't there? A. I don't know of any.

Q. Mr. Chairman, just as showing the frequency of communications between Mr. Shonts and Mr. Morgan, I would like to give these dates which may be corrected if I am in error, but I think I am not. In 1909, there were the communications which I have already mentioned. Then we come to September 1910. These are letters which have previously been produced by Mr. Fisher. I am just giving you the dates of those letters. September 15 Morgan to Shonts, September 23 Shonts to Morgan, November 18, 1910, Morgan to Shonts and Shonts to Morgan, April 27, 1911, Morgan to Shonts, April 28, Shonts to Morgan, March 1, 1912, Shonts to Morgan, same day Morgan to Shonts, March 29,

1912, Morgan to Shonts, April 9, 1912, Morgan to Shonts, April 12, 1912 Shonts to Morgan, April 22, Shonts to Morgan, May 3, Morgan to Shonts, May 4, Shonts to Morgan, May 24, Shonts to Morgan. That is a portion of them.

Q. Do you say that were no letters that passed between you and the Morgan house in March and April, 1910? A. I don't know. You didn't seem to read any there.

Q. I read none, because I was only reading what you had previously produced through Mr. Fisher. A. I think we produced the whole file. They should have produced the whole file, if you asked for it, and I suppose they did, but those letters don't indicate anything like the number of talks.

Q. Oh, no, there must have been more talks than that. A. Many more.

Q. And conversation probably took the place of writing in a great many instances or there would have been more letters. A. Is that a question?

Q. Yes. A. The letters, I presume, would be the result of talks, would be boiled down talks, talks that had got somewhere.

Q. Well, I am going to ask you again, see if we can't associate ideas and bring up some correspondence or communication between you and Mr. Morgan or some of his partners in March and April, 1910. That is one of the unsolved situations. There was a letter by Mr. Shonts to Mr. Freedman of September 13, 1910, put in the record under Mr. Colby at page 49 and 57. I will just read it over to recall it to your mind:

"Dear Andy:

"Mr. Belmont and I spent a couple of hours with the people on the corner yesterday. They announced that they (The National City and the First National Bank) were prepared to get under the Interborough securities and put the representatives of each institution on our board and become publicly identified with the proposition.

"They are willing to now loan us the $30,000,000 required for financing the elevated improvements and extensions and on May 1st next will loan us the $32,000,000 re-

quired to take up the maturing 6% notes now outstanding, and to sell 52,000,000 5% bonds at a price to be agreed upon.

"While the terms proposed for the loan seemed high, they claim the prices we will get for the bonds when sold, because of their united backing and influence, will probably be such as to more than compensate for the rate they are forced to charge us on notes at the present time, besides having the permanent advantage and protection of their association with us, which will always help the profits.

"Augy was rather of the opinion that we had better go on and trade with the Public Service Commission without making positive provision for the money, thinking we might make a little better settlement with these gentlemen later on. I not only doubt the wisdom of our closing with the Public Service Commission until after we are fully financed, but also doubt our ability to make better terms than those proposed, for, as you know, this combination not only makes the strongest financial group in this country but probably in the world, and I think they fully realize their influence and power.

"I do not think it prudent to write more than is contained in this letter and wish very much you could be with us, for I believe the situation is such as to require the earliest and most careful consideration."

A. What is the date of that?

Q. September 13, 1910. Had you any conference with Mr. Morgan or with his partners on the subject of this letter? A. I had a conference with Mr. Morgan in connection with Mr. Belmont, as stated in that letter.

Q. But in connection with the backing that was to be furnished by the National City and First National Bank? A. Yes, at that conference with Mr. Morgan, through the influence of his firm, these others agreed to come into that.

Q. In other words, this was to be a Morgan proposition? A. In other words, they were to come in as our bankers.

Q. Now, didn't you have conversations with Mr. Morgan along

this line as far back as March and April? A. Not that I remember.

Q. You won't say that you didn't, but you don't remember? A. I don't think I did.

Q. Here is a letter from August Belmont to Andrew Freedman of the same date, September 13, 1910 :

> "Dear Mr. Freedman : Important matters will come before the Executive Committee during my absence. Mr. Shonts will explain to you my reason for thinking we ought to go a little slow. I am of the opinion that there is no risk in closing with the Commission without first making financial arrangements, if it seems wise to close the matter now. I am going to Canada and will not be back before the 5th of October." (Exhibit No. 7).

This is an expression of opinion by Mr. Belmont that there would be no risk in closing with the Commission without first making arrangements for financing, and he says that you will explain. What did that mean? A. Just what I had already written to Mr. Freedman, that he thought we could go ahead and take our chances, for we might get the money a little cheaper.

Q. That you would go ahead and sign a contract, or at least make a proposition which would involve your financial ability to a considerable extent without having made any positive arrangement with your bankers? A. My letter shows I didn't agree with him.

Q. Didn't you have such an understanding with the Mayor, that you could safely do that? A. I did not.

Q. Weren't you assured by the Mayor at St. James of his friendliness to your proposition? A. I was not.

Q. And when you changed from private capital to public capital, he never reproved you? A. The only proposition at St. James was what I told you.

Q. He never reproved you for changing from private capital to public capital? A. I wouldn't say he didn't reprove us. I think about July, 1911, he reverted to calling us scroundrels or rascals.

Q. How long did it last? A. I don't recall. I am simply answering your question.

Q. How long did it last? A. How long did his opinion last?

Q. I mean that of July 19, 1911. A. It lasted long enough for the purposes of that time. It upset an agreement that we had reached at the Metropolitan Club. It was long enough for that purpose.

Q. It wasn't long after that that he delivered you from the B. R. T., was it? A. The B. R. T. was in the situation then.

Q. But he delivered you from it? A. I didn't know that we were ever in the hands of the Philistines.

Q. Did you ever know of any meetings behind closed doors? A. I have heard of such things.

Q. In the Mayor's office? A. I never heard of them there.

Q. This is a letter of Mr. Freedman that is produced from Mr. Freedman's files by the Guaranty Trust Company, and is the original carbon of a letter dated July 26, 1912, by Mr. Freedman to Mr. A. J. County, Broad Street Station, Philadelphia. (Exhibit No. 8.) Mr. County represented the Pennsylvania Railroad, didn't he? A. Yes.

Senator Thompson.— How did they come into it? A. After this change of mind on the part of some of the city officials.

Senator Thompson.— What do you mean by that? A. We had agreed at the Metropolitan Club on July 19, 1911, on a trade and Mr. Prendergast changed his mind, and the Mayor came out and denounced us as scallawags.

Senator Thompson.— And rascalities? A. And rascalities. I said to our people that it was perfectly useless and futile for us to negotiate further with the city officials. My judgment is that we had better face the risks of competition in other lines than to make better terms than we had offered to make in this proposition and that had just been rejected, and we dropped that. I think it was along in October, after the July 1st, Mr. Ray, the President of the Pennsylvania (Mr. County was his assistant) and afterwards Mr. Seth Low and Morgan J. O'Brien and other gentlemen came into the situation, called on us, wanted to find some ground that they could meet on, and they really acted as intermediators for four or five months. I didn't deal with the city officials at all. I think

it was on February 27, 1912, the first time I met them after the time I have mentioned. That is how they got into the situation.

Q. I will read Exhibit No. 8 into the record:

"Dear Mr. County:

"Your favor of July 25 to hand. I had a talk with Mr. Peters after you had seen the Mayor and he told me of your conversation with him. Yesterday a personal friend of mine, the manager of the Times, spent an hour with the Mayor discussing the subway situation — the interview having been at the Mayor's request. The Mayor told him of the visit of Mr. Peters and yourself, and stated that matters were not at all conclusive, that he was not satisfied with the McAneny report and that it meant nothing to him. Also that he did not propose to be carried away by any clamor, and he is satisfied that the best interests of the city would be served by a universal 5-cent fare and such operations as would be satisfactory to the taxpayers and yourselves, by which he did not mean the B. R. T. operations.

"The editorial in this morning's Sun about describes the situation when it states that the McAneny report is practically a 'monument to insanity.' The editorial in The Times was also very strong.

"I have been informed by Mr. Barclay Parsons in regard to the contracts let on the Lexington Avenue line, that all of them in their present form are illegal and are not the contracts either passed or approved originally. He states that, in his judgment, not one of them can be maintained in court as legal.

"If there were any concentrated movement at this particular time, though I realize that most of the important persons are leaving the city for their vacations, it might be effective. If, however, after, in September a concentrated movement of property owners and taxpayers was started, it only means a rally point to carry it through to a successful issue, and the great interests of Manhattan, Bronx, and Queens would fall in line without urging, and a great deal could be accomplished

by saving the city from the monumental act of insanity and facilitate in the near future the growth of the city, the convenience of the traveling public, a single fare, and, at the same time, save the taxpayers tens of millions of dollars. As I stated above, it only needs a substantial rally to start this movement.

"Personally, I am a large taxpayer and owner of a great deal of property in the Bronx, which has lain dormant for years, and I have been unable to dispose of it at anywhere near a reasonable price because of the lack of transportation facilities in that direction. Therefore, I sympathize with the taxpayers and property holders.

"Yours very truly,

"ANDREW FREEDMAN."

Now, in this letter, it is stated that the Mayor had said that he was not satisfied with the McAneny Report — what was that? A. I don't know. I never saw or heard of it before or anything contained in that letter.

Q. And the Mayor said that he did not propose to be carried away by any clamor, for he was satisfied that the best interests of the city would be served by a universal 5-cent fare, and such operations as would be satisfactory to the taxpayers and yourselves (by which he did not mean the B. R. T. operations). Did you have any talk with Mr. Freedman about this letter? A. I never heard of it until you read it.

Q. Did you know that at that time the Mayor was committed against the B. R. T. operations as stated here by Mr. Freedman? A. I never heard of anything that is contained in this letter.

Q. Notwithstanding what you have said about his remarks concerning rascals, you see, from this statement of Mr. Freedman here in this letter, he was opposed to the McAneny report and opposed to the B. R. T. on July 26, 1911? A. That was just a week to the day after our proposition was rejected by him.

Q. And it was five days after the Board of Estimate and Apportionment had favored the B. R. T., through the change of vote by Mr. Prendergast. Do you remember now? A. If that is what he means by the McAneny Report, then I know what he meant.

Q. Giving it all to the B. R. T.? A. I didn't recognize it by the name, McAneny Report.

Q. Shortly after you say that the Mayor had renewed his attack upon the Interborough, within five days after the B. R. T. had got it all, so far as the Board of Estimate and Apportionment could give it, through the change of vote by Mr. Prendergast, you have Mr. Freedman writing this letter to the effect that the Mayor is against McAneny and against the B. R. T. and that he is quietly in your favor? A. So it seems.

Q. When did you see the Mayor prior to July 26, 1911? A. I don't remember.

Q. How do you account for it, if you can account for it, that notwithstanding the Mayor's attack on your company publicly, privately he was favoring it? A. I don't account for it. I didn't know.

Q. Wasn't there a working agreement between you and the Mayor? A. No, sir, other than I have testified to by his appointment of those two gentlemen whose report I never even saw.

Q. Those two gentlemen practically acted as arbitrators, didn't they? A. Oh, no.

Q. They finally brought you and the B. R. T. together? A. No.

Q. Then, they brought you together with the Mayor and the other folks? A. I never knew the origin of the dual contract until I heard Mr. Kingsley Martin testify.

Q. You remember the time when the Mayor who had been your terrible opponent came in? A. Came into what?

Q. Came into the scheme, gave you what you wanted? A. We never got what we wanted.

Q. I suppose you never would. It gave you all that you dared ask for. A. Not on your life.

Q. You never asked for any more, did you? A. Indeed we did. There were some very unjust things forced on us.

Q. Did you sell your bonds on the strength of it and did you write a letter that helped sell those bonds? A. I make the best of every proposition.

Q. Did you make a "beautiful best" of it? A. You are very complimentary.

Q. And you folks are all happy in the purchase of Inter.-Met., which has been rejuvenated with the blood of the subway — isn't it so? A. Partly.

Q. You haven't any fault to find with us, have you, the outcome of it? A. The outcome of it is working out very satisfactorily.

Q. Yes, indeed. Well, the Mayor helped you do it? A. At the end.

Q. And at the end Prendergast helped you do it? A. Yes.

Q. And both of those men ate crow in doing it? A. I suppose they had a perfectly good reason.

Q. And when you came down to the end, there was only one Roman holding out, and he was the first witness on the stand today? A. Yes.

Q. How is it that you never got him over? A. Mr. Mitchel always stood for the construction if subways by city money.

Q. He stood where he stood before election? A. In that respect, if they had the money, I stood with him. We only got into the situation because they had said they didn't have the money to carry out their schemes, but only a portion of their schemes.

Q. Do you remember when the tax assessment was jumped up over a billion dollars for the very purpose of giving the city money? A. Yes.

Q. And they were all declaring that there was plenty of money?

Mr. Quackenbush.— Oh, no.

Q. I suppose there will never be " plenty of money."

Mr. Quackenbush.— They didn't have enough for this great scheme that they were going into.

Q. Was it proposed that they should take it so much a year?

Mr. Quackenbush.— That is what we always advised them to do.

Q. Did they propose to do it?

Mr. Quackenbush.— They didn't take our advice.

Senator Thompson.— Did you ever say to anybody, after these contracts were signed, that they were worth a hundred million dol-

lars to your Company, or words to that effect? A. Never. I said they had skinned us down to the very bones, and they had.

Senator Thompson.— Do you think they had? A. Yes.

Senator Thompson.— I want to know one of those unjust things that went into there, as far as you are concerned, because I like to hear the other side of that, just one or two of them. A. All right, I will give you one. We had built, in perfect good faith, what was called the Belmont Tunnel and Steinway Tunnel, and which, with interest, had cost us twelve million dollars.

Q. The city took that over for what? A. Chairman Willcox had a very winning way about him, and a very persistent way with him, and he would get us poor fellows up before him, and cause us to believe, if you will do so and so, that is the last thing we will trade. This Steinway Tunnel was one of them. They offered us $3,000,000, and, on the theory that that would be about the last thing that they would stand apart on, I agreed to it. He would stick a pin in everything of that kind, and if ever we would want to go back and open up where those pins were stuck that he had stuck there, he would say, "Oh, no, that was agreed to,' but if we wanted a change, that was a different proposition.

Senator Thompson.— You think it was an injustice, as I take it, that the city should pay you $3,000,000 for this Steinway Tunnel that cost you $12,000,000, and let you go on and operate it under this lease? A. They didn't do that well by us, Mr. Chairman. After he had stuck his pin there, and after two years had elapsed and we did finally trade, he said, "There is half a million dollars accumulated taxes. Now, you will pay those taxes." Well, I said "No, if you are going to stick the pin on that and take possession of that Steinway Tunnel, you should pay the taxes." We finally had to pay the taxes. We really got only $2,500,000 out of a $12,000,000 investment. That is one of the things I don't think is fair.

Q. (By Mr. Moss) Wasn't the validity of that franchise at stake at that time in court proceedings? A. The suit was brought by the city, and it was altogether in the hands of the city to deal equitably with us if they had wanted to do so.

Senator Thompson.— This letter of March 23, 1910, accorded with the lead pencil interlineations of the letter of March 22, 1910. If that had been sent and agreed upon, then you would have to pay the whole cost of the Steinway Tunnel, would you not, and have operated it? A. I haven't got that in my mind.

Senator Thompson.— That is true? A. I couldn't answer that without reading it.

Mr. Willcox.— The whole cost. It would have all gone into the cost of the subway upon which you would have got interest in the sinking fund, 7%.

Senator Thompson.— But in forty-nine years, the city would have gotten it.

Mr. Willcox.— It was not $3,000,000; it was at the full price.

Senator Thompson.— That is all right. It doesn't make any difference. The question was who put up the money.

Q. (By Mr. Moss). I want to ask you about this leetter of July 26, 1911, where the Mayor told him of the visits of Mr. Peters and yourself and stated that matters were not at all conclusive. "Yesterday, a personal friend of mine, the manager of the Times, spent an hour with the Mayor discussing the subway situation, the interview having been at the Mayor's request. The Mayor told him of the visit of Mr. Peters and yourself and stated that matters were not at all conclusive, that he was not satisfied with the McAneny Report and that it meant nothing to him." Do you know anything about that? A. Not a thing, never heard of it before.

Q. Did you know that the manager of the Times and Mr. Peters had called upon the Mayor? A. No, I didn't know of anything of the kind, in fact, I didn't know of any of the things referred to in that letter.

Q. Did you and Freedman have confidences together? A. Certainly.

Q. Were you in town on July 26, 1911? A. I don't know.

Q. Is there any reason why Mr. Freedman would not have told

you this? A. I don't know, but he didn't. I don't know anything about it.

Senator Thompson.— But, Mr. Shonts, you were the executive head of this corporation? A. Yes.

Senator Thompson.— I assume that your corporation, like most others, finds it necessary to do all its business through the executive head? A. It ought to.

Senator Thompson— You can't make a success of a thing unless one man understands it all, can you? A. It ought to have been that way, but I didn't know anything about that.

Senator Thompson.— Could it be possible that Mr. Freedman, one of your directors, would make independent negotiations, without taking it up with you and having you understand it? A. Never heard of a thing in there before.

Senator Thompson.— Was he in the habit of doing that? A. I don't know.

Q. (By Mr. Moss). Do you know whether Mr. Freedman called on the Mayor by himself? A. No.

Q. Did he ever tell you? A. No.

Q. Did you ever ask him to? A. No.

Q. Here is Mr. Freedman with a knowledge of things that you don't seem to have any memory of at all. A. Absolutely ignorant of.

Q. It looks like an important conversation, too. I will show you how important it is. That is July 26, 1911; on May 24, 1911, the Times printed an article entitled, "Gaynor Called Interborough Alley," and prints that letter of Colonel Williams to Mr. Morrissey. Then again, the Times prints on June 3, 1911, coming closer, an article which contains a clause headed, "Gaynor Attacks the B. R. T." It goes on to say, " Taking his text from the fact that a B. R. T. motorman did not stop for him one morning a few days ago when he wanted to take a car for Manhattan on Flatbush Avenue, Mayor Gaynor made public yesterday a letter written to Frank J. Mills, a Brooklyn real estate man who it is said wrote to the City Hall declaring he saw the incident.

The Mayor wrote a letter attacking the Railroad Company as follows :

"May 31, 1911.

"Dear Sir :

"Your letter of protest against the way you saw the Mayor treated is at hand. Of course, all of you in the car noticed the way I was treated by the motorman, but I did not wish to find fault with him, even though he did it intentionally, which seemed to be very plainly the case.

"The President of the Company deliberately tried to insult the Mayor through the newspapers a day or two before by a public statement that the Interborough Railroad Company office was the Mayor's office, and, of course, many of his subordinates may feel disposed to treat me the same way, taking the cue from their superior, but I do not and shall not complain. I am satisfied to be mistreated when I know or feel that I am trying to do right.

"Part of your letter speaking of the treatment of people by the B. R. T. does not need any concurrence. Everybody knows that they have treated us like cattle for years. They undeypay their employees, and that, of course, in itself, brings about inefficiency. The system has been on the verge of bankruptcy for years. They have not a single modern car in the whole system. They still have the little cars with the little narrow front and rear platforms which were in general use twenty-five years ago and the like of which are not now to be seen in any city of the United States, or anywhere, except in Brooklyn. In addition to that the running gear of the cars is worn out. I cannot talk on the sidewalk while cars are going by. Your companion cannot hear you with the flat wheels and rickety machinery.

If the Public Service Commission were to issue an order, which they have power to do, that the company put on modern cars, it would have to go into bankruptcy. It would not be financially able to obey the order. All of their wires are still overhead and if the Public Service Commission should order the Company to put them under ground, it would have

to go into bankruptcy. There is not another such ramshackle railroad system anywhere, as far as I know. The overhead rods are in equally loose and dilapidated condition. They have not been painted in ten years.

"All of the roads are leased to the Brooklyn Heights Company, and the B. R. T. owns all the stock of that Company, and in that way, although it is not a railroad company at all, but only a business company, controls all the railroads in Brooklyn and has nothing in view except to milk them so as to declare a dividend on its inflated capital. The same kind of railroad financing here in Manhattan and the Bronx fell of its own weight and went into the bankruptcy courts over five years ago. Eventually, it will have the same fate everywhere.

"But, I am saying more to you than I intended, and I only meant to thank you for expressing your protest against the way you saw the Mayor of the City treated, etc.

"W. J. Gaynor."

Now coming down closer, on July 15, 1911, the American prints an article:

"Careful analysis of the demands made by the Interborough Rapid Transit Company for the construction and operation of the subway and elevated lines shows that the Company is trying to force the city to a premium of $93,000,000 for partial relief during the next forty-nine years.

"Despite the efforts of Mayor Gaynor to keep secret the real price to be paid by the city to the Interborough, it became known that the Interborough has inflated its actual investment in the present subway, etc."

Now, I am only quoting these to show the state of mind as was indicated by the various newspapers at this time.

Here is a quotation from the American, July 28, 1911: "The Mayor tries in vain to block subway action." "Again it is charged that his action is in favor of the Interborough." The same paper says on January 11, 1912, that there were secret con-

fidences, talks about "traction trusts," relating, of course, to the Interborough.

Now with the condition in the minds of some part of the public, at least, as is evidenced by these clippings and others that I might give you, I ask you again, are you able to recall any conversations that you had with Mr. Freedman concerning the successful efforts that were made to keep the Mayor friendly towards the Interborough and antagonistic towards the B. R. T.? A. No.

Q. Did you yourself see the Mayor or communicate with him on that subject? A. Never, except as I have testified to you.

Q. Now, I call your attention to another article printed in the American, May 10, 1912. We are getting nearer to the time when the contracts were finally decided upon. A. The memorandum we agreed upon, I think was February 27, 1913. (?)

Q. That was the memorandum about the contracts that had not yet been formulated? A. That is right.

Q. Now, the other day I called your attention, out of this very article, to the letter which you sent to the Mayor enclosing one from Mr. Morgan in which practically he was threatening to abandon the project of financing the operation if matters weren't brought to a head. Do you remember? A. I remember the letter, yes. Did you call my attention to that on the stand?

Q. I think I did. A. I don't remember of your calling my attention to it, but I remember having heard of it. Maybe you did—I am not sure.

This is a letter dated May 6, 1912:

"Dear Mr. Mayor:

"I beg leave to enclose you herewith copy of letter mailed to me by President McAneny on May 4. This letter was written pursuant to formal written notice to our bankers under date of May 3.

"In a conversation with Mr. Morgan today, he told me that the situation down town was so unsatisfactory that he might be compelled to withdraw in any event. However, if the Board of Estimate and Apportionment should vote favorably on Thursday of this week, the 9th inst., on the Inter-

borough proposition, he would undertake to finance the deal, although he says he may have to ask for more liberal terms."

Do you remember the letter now? It is already in the record, so I won't read any more of it. Now, comment upon that letter follows:

"Mayor Gaynor hopes to jam the Interborough program through, because he favors the railway and the Belmont interests in the subway field and because the Pennsylvania and Long Island Railroad interests, which he has always favored are allied with the traction trusts.

"Comptroller Prendergast has joined Gaynor because of the Comptroller's surrender to the J. P. Morgan influences in Wall Street. He has even gone to the extent of opposing the engraving of city bonds by printers opposed by the Morgan interests.

"McAneny is now on the side of the Interborough group, although he has been in and out with the Interborough influences many times during the last year.

"Mitchell can be counted on to vote against the scheme."

Now, was not that letter of Mr. Morgan designed to force the culmination of this pending deal? A. No, I think the letter of Mr. Morgan was just what it says. The money situation was in a nervous condition and he didn't want to be tied up indefinitely. That happened two or three times without a letter being written. It happened to me and it stopped with me on two or three other occasions, they got uneasy about the situation and said if some action was not taken they would withdraw.

Q. Now, we have been all around this matter, and I want you to come back to those interesting dates in March and April, 1910. Do you recall distinctly now the meeting you had with the Mayor on the 19th of April? A. No, I don't recall it distinctly, but, as I say, I have an impression that Mr. Willcox and I called on the Mayor. Is that right?

Mr. Willcox.—Yes.

Q. Don't please, you are testifying not to Mr. Willcox. He is not under oath and you are. A. All right, excuse me.

Q. Did you see Mr. Morgan just before that time, just before the 19th of April? A. I don't remember.

Q. Did you see Mr. Morgan in April? A. I don't remember.

Q. I have called your attention to the large correspondence, given you the different dates, many, many letters passing between you and Mr. Morgan on all the subjects except this one that showed up in the letters of March. A. And I have replied that any time that any conclusion was reached, it would probably result in a letter being written, that there were many interviews where there were no letters written, and I probably saw Mr. Morgan during this interim, but I have no recollection of any particular conference.

Q. The very morning after you had the conference at Mr. Willcox's house over this letter dated March 22, you met with your Executive Committee, didn't you? A. Yes.

Q. And you never said a word to them about it? A. There is nothing in the records to show that.

Q. And you never said a word to them about it, did you? A. There is nothing in the records to show that.

Q. I know there is nothing in the record. A. I don't recollect that there was. I discussed it with the Board immediately following.

Q. You did get power to transact all the business that the Board of Directors could do in the making of the subway plans? A. The Executive Committee did.

Q. Didn't you on that morning tell Mr. Freedman that you had come to a tentative arrangement with Mr. Willcox? A. I don't think so.

Q. Didn't Mr. Freedman object to your commiting the company to the spending of so much money? A. I don't think so. I don't remember.

Q. Didn't Mr. Freedman tell you there was an easier way? A. He did not.

Q. Did Mr. Freedman ever tell you that there was an easier way than commiting the company to spending so much money? A. He never did, nor did anyone else. I have testified to that several times.

Q. Well, you have changed your testimony several times, Mr. Shonts. A. Not on that.

Q. Stop a minute, please. You have changed your testimony several times; how do I know whether you will on that or not? The preliminary signs are quite different. A. Now, Mr. Moss, have I changed my testimony?

Q. You have changed your testimony in a monumental way. A. Tell me one instance.

Senator Thompson.— I will tell you one. You said to me this morning that April 24 was the first time you had met Mr. Gaynor. Now, being refreshed by the recollection of your minutes, you find you met him on the 19th. A. That isn't changing my testimony. That is simply having my mind refreshed on the matter.

Senator Thompson.— We are all strangers to this matter and we are all trying to find out a bit. We ask you and you say, "Yes, the 24th of April, that is the first time I saw him." We think that is so. Then, we go looking through the minutes of your meetings and we find that on the 19th, he was so good that he was going to be your arbitrator, and then we rather lose confidence. A. I want to tell you what I remember, but I can't tell you more than I do remember.

Senator Thompson.— I have been a director of some corporations that didn't get any good salaries that you do — A. If you handle all your work as well as you do this, you should.

Senator Thompson.— We can remember when we had any good luck and we can remember the talks we had. We can always remember them all, and it seems strange to me that you can't. A. Since we are comparing notes to-day, you are fifteen years younger than I am and fifteen years makes a difference.

Mr. Moss.— In memory? Does memory get worse in fifteen years at your time of life?

Mr. Shonts.— I don't think my memory is as good as it used to be.

Mr. Moss.— That sounds rather bad for some of us.

Mr. Shonts.— You are nothing but a boy yet.

Mr. Moss.— I hope so, but I have been looking forward to a better and better memory, and I think I am going to have it, too.

Mr. Shonts.— I hope you will.

Mr. Moss.— I think you have it, too.

Mr. Shonts.— You are getting the benefit of all I have.

Mr. Moss.— I think you are not just to yourself in your statement of your memory.

Q. (By Mr. Moss) Did you tell Mr. Morgan of the meeting you had at Mr. Willcox's house? A. I don't remember.

Q. You said that you did a few minutes ago. Now you say you don't remember. A. That is twice I testified on that.

Q. But your memory seems to be able to change. A. It is, if I have anything to refresh it.

Senator Thompson.— Of course, I cant understand why you had so much time having directors' meetings and typewriting on the 23d of March. You must have know all these conditions unless you had had a talk with somebody. It is all different along in April. A. We didn't have to wait a month.

Senator Thompson.— Just tell us all about it. A. I was about to tell you of the period between the 23d and the 28th.

Senator Thompson.— Just tell us how it came around. That is what we want to know, just as though we were sitting down in our offices talking it all over. A. I made that long speech this morning as to it. When we became thoroughly convinced that what Chairman Willcox wanted to do was to build what they called the normal extensions with private capital so as to leave all of the city's margin of credit for the construction of a competitive line —

Senator Thompson.— You had that $50,000 lawyer with you up to two o'clock in the morning? A. Who was that?

Senator Thompson.— Rogers. Didn't he give you some idea

that Willcox was putting it over you before you left? A. A man may be a $50,000 lawyer and yet not be a mind-reader.

Senator Thompson.— I could give you an answer on that for less money. Any lawyer can tell you that. A. I expect you could for less money. The further we got into that study, the more we became convinced that the only result of our building those extensions with private capital would be to let the city have the total margin of credit to build a competitive line for us.

Senator Thompson.— I want to tell you what we think. We think you had some talks with Hr. Morgan about that time. We think you must have had, and some with Mr. Freedman and some with your executive committee about this very thing. That is what Mr. Moss wants you to tell him, wants you to recollect to tell him. A. I don't remember about Mr. Morgan at all. I don't remember from Mr. Freedman different from any other member of our board. I remember at our board meeting we discussed this situation and the authority was given so that if we wanted to act quickly we wouldn't have to call the full board together. We could get the executive committee together. That was the purpose of that authority.

Senator Thompson.— But, did you have some talks with Mr. Morgan? A. I don't remember.

Senator Thompson.— You don't remember any during March or April? A. No.

Senator Thompson.— Wasn't it Mr. Morgan's habit, when you had a talk with him to kind of take a memorandum of it? A. I never saw him do it in the world.

Senator Thompson.— Make a memorandum of it right afterwards? A. I never saw him do it.

Senator Thompson.— Didn't you do that? A. No.

Senator Thompson.— Did you write letters back and forth? A. Not unless we reached a conclusion. There were many times that matters involving very large sums of money would go on

weeks and weeks, and sometimes months, without writing any letters, and yet there was an understanding.

Senator Thompson.— Mr. Morgan had a good many friends among your directors about that time? A. I presume all of them were Mr. Morgan's friends. They ought to be.

Senator Thompson.— Mr. Lane was a banker. He was connected with him in business? A. Mr. Lane really, I suppose, represented in a way the firm of Morgan.

Senator Thompson.— Mr. Reid was a banker? A. Yes.

Senator Thompson.— Several of them on there didn't know anything about the active operation of railroads? A. They thought they did.

Senator Thompson.— Did Mr. Reid think he did? A. Mr. Reid was a pretty wise man.

Senator Thompson.— But, he was a banker. He never had run a car. A. He had been a Chairman of Steam Railroads, a rather important one.

Senator Thompson.— You were about the only one around that had actually worked in the operation department of a railroad? A. On the Board?

Senator Thompson.— Yes. A. I imagine that was so.

Senator Thompson.— The rest of them were principally bankers? A. Businessmen and bankers, but Mr. Reid had had a great deal of experience with steam railroads.

Senator Thompson.— I have just told you what Mr. Moss wants to know, and I am going to see if he can find out.

Q. (By Mr. Moss) Do you know Mr. Davison? A. Yes.

Q. Did you have any talks with Mr. Davison in March and April, 1910? A. Not that I recollect. I will tell you — you may be interested to know, because it may help solve the situation — when I first became acquainted with the firm I knew Mr. Morgan, *Jr.* Whenever Mr. Morgan, Jr., was in this country, I always had talks with him. In his absence abroad, I talked with Mr. Davison.

immediately on Mr. Morgan's return, I again resumed with Mr. Morgan. So, I never talked with Mr. Davison when Mr. Morgan was home, except during certain portions of these negotiations toward the last where they both sat in conferences.

Q. Let us switch to another matter, because sometimes your memory returns after a little interval of rest. I have in my hand that majority report dated January 5, 1911, signed by William A. Prendegast and John Purroy Mitchel, both of whom you heard testify this morning. By the way, this was a majority report, the Mayor wasn't with them. The Mayor stood on one side and Prendergast and Mitchel stood on the other:

> "Your committee is convinced that the City can have these new extensions of the Interborough system and at the same time have its independent system, if only the members of the Board will stand fast by the prinicples which, in our judgment, should govern the settlement of this question."

On page 33:

> "The question presented to this Board in considering this matter at the present time is twofold: First, of principle — shall the City insist upon a new and independent subway municipally controlled, in accordance with the platforms on which the members of this Board were elected? Second, the essentially practical question — shall the members of this Board deliberately create a monopoly of underground transit in favor of the Interborough Company, turning over to that Company all the city subways for a period of fifty years on terms which give the Company the profits and the city the risk, and this in the face of the history of the Interborough Company with the City of New York, in order that the issue of monopoly as against an independent city-controlled subway system may be placed squarely before this Board.
>
> "Your Committee offers the following resolution:
>
> "First, that the available credit of the City be devoted to the construction of an independent municipally owned and controlled subway system whose integrity as an operating unit can be forever maintained.

"Second, that the present or future available credit of the city shall not be left in whole or in part to any corporation or individual for the extension of any system of subways until such independent system shall be completed and in operation.

"(Signed) WILLIAM A. PRENDERGAST,
"JOHN PURROY MITCHEL."

At another point, it reads:

"Your Committee submits that no matter what the reasons in favor of the cause, there remain the gravest reasons against it. Some of these reasons your Committee submits are to be found in the history of the relations of the Interborough Company with the City of New York, and the various efforts to compel adequate service from that corporation. That history discloses a corporation always reactionary, also always unwilling to comply with the reosonable authority to improve its system, its service or equipment, a service always disrespectful of the public comfort, always contemptuous of authority, until it faces compulsion brought to bear through the machinery of the law. The Interborough Company, entrenched behind the unassailable rights granted it by virtue of its present lease, can afford to flout the city authorities and Public Service Commission and to despise public indignation, since the public has the option either to ride under the conditions offered by the Interborough Company or to walk.

A. Who signed that?

Q. John P. Mitchel and William A. Prendergast. Now, I am going to ask you how you got Mr. Prendergast over? A. can't tell you.

Q. It was a providential deliverance, was it? A. I don't know a thing about it.

Q. Providence just dropped him in your lap? Were you surprised when he voted for your plan finally? A. There were some months between that and July, 1911. This was in January, 1911.

Q. Didn't Mr. Hawley, before he died, assure you that they had obtained the votes to put this through the Board of Estimate and Apportionment? A. He did not.

Q. Did Mr. Hawley and you talk on that subject? A. Never.

Q. Did the name of Mr. Prendergast ever pass between you and Mr. Hawley? A. Not to the best of my recollection.

Q. Did it pass between you and Freedman? A. Not to the best of my recollection.

Q. Between you and Berwind? A. No.

Q. Between you and Morgan? A. No.

Q. Between you and Davison? A. No, sir, not in that sense.

Q. Not in what sense? A. In the sense that you just asked your question.

Q. I mean in the sense that he was opposed to you. A. I knew about this report, yes.

Q. Did you discuss his opposition to you with your fellow-directors or any of them? A. I suppose that I did.

Q. With whom? A. All of them.

Q. Did you discuss measures for getting him to support you? A. No, we never adopted any measures to get him to support us other than the logic of the situation that we undertook to create.

Q. Did you ever see Mr. Prendergast in any other city than New York? A. No, sir.

Q. Do you know what it was that induced him to change from that flamboyant statement to the position where he put his name down to voting for you? A. I don't know what could cause him to change that or what changed him back or what brought him back again.

Q. Did you ever talk with him about the subway proposition? A. I don't think I was ever in his office but once.

Q. Did you ever talk with him about the subway proposition? A. Once.

Q. I am not talking about his office. A. Once.

Q. Is that the only time you talked with him? A. That I have any recollection of.

Q. When was that? A. That was in the early stages when the question of recapture was up.

Q. When was it? A. I can't tell you the time. I am trying to help locate it.

Q. What year was it in? A. I don't remember.

Q. Was he with you or against you? A. He was contending

against us. He was contending for the right not only of recapture on the terms that we didnt think were fair, but for the exchange on an even basis. That is to say, the City should have the right to take over the Fourth Avenue below 42d Street in exchange for the Seventh Avenue below 42d Street.

Q. Did you ever go to his house? A. Don't know where he lives.

Q. Did any of your associates go there? A. Not that I know of.

Senator Thompson.— Was there any lawyer around that knew him as well as Townes did Gaynor? A. Not that I know.

Senator Thompson.— I might say that in that letter that he put out last week, while he referred to this report, he forgot to quote any part of it.

Q. (By Mr. Moss) Is this your letter? You wrote that, did you? A. Yes, that is my signature.

Q. This is exhibit No. 9, a letter of Mr. Shonts to Andrew Freedman, August 22, 1910.

> "My dear Andy: I have yours of the 19th. Nothing has been done since you left, except that the old story has been revamped in the Times. My impression was Wiley had told you that this man had been located, and that sort of thing would be stopped.
>
> "I have had nothing at all up with Morgan & Co., except the question of financing the third-tracking and extensions of the elevated, (in case we should trade with the city,) and that has not been brought to a head.
>
> "Hope you are having a pleasant time, which will prove of much benefit to you.
>
> "With kindest regards,
>
> Very truly yours,
> "T. P. Shonts.
>
> "Andrew Freedman, Esq.,
> "Maplewood Hotel,
> "Maplewood, N. H."

Now had "that sort of thing" reference to these propositions? A. No.

Q. Had that reference to anything connected with these railroad matters? A. No, sir.

(Mr. Shonts tells counsel privately what he meant by the expression "that sort of thing.")

Q. Now, "I have nothing at all up with Morgan & Co. except the question of financing the third-tracking extensions of the elevated." You had that up, didn't you? A. Oh, yes, we made a formal proposition, I think in June of that year. My recollection is June 10.

Q. Well, they had stood ready to back you up on all the propositions that were pending up to that date? A. Whenever we had made a proposition that was formal, they had agreed to it, and of course we had their promise back of it.

Q. Well, by August 22, 1910, didn't they know then of the proposition you had made in March? A. That fell through.

Q. Hadn't you talked about that? A. I say I don't know. I may have.

Q. Hadn't they agreed to finance you? A. There was never a proposition.

Q. Hadn't they told you they would finance you, either Morgan or Davison? A. I don't think I asked them to. I don't think we had gotten that far.

Q. Hadn't they told you that they didn't think it was necessary to finance a proposition of that kind? A. No.

Q. Hadn't they advised with you about the way of getting the Board of Estimate and Apportionment to vote with you? A. Never in the world.

Q. Did you tell Mr. Morgan or Mr. Davison of your visit with the Mayor. A. Which visit?

Q. To St. James. A. If I had thought of it, I did. I don't remember.

Q. Did you tell Mr. Morgan or Mr. Davison of the figures and plans that were made by Mr. Headley and the others? A. I wouldn't tell them those things.

Q. Did you talk with Mr. Morgan or Mr. Davison about the proposition that the Mayor sent over to the Public Service Com-

missioners for you in July, 1910? A. That was a formal proposition.

Q. Did you talk with him about it? A. Oh, certainly.

Q. That was for city money? A. Yes.

Q. Well, didn't you tell him—. A. But, we would have to equip it.

Q. Didn't you tell him that you had this other understanding? A. Not that I recollect, because we didn't have an understanding. Mr. Willcox was just as firmly, in those days, committed to the Tri-borough route as these people seemed to be whose report you read a few minutes ago, and said that under no circumstances—

Q. When you left his house on the 22d of March, did he stand committed to the Tri-borough route as against your proposition? A. He did. He never gave that up. That is the reason of our second revise there of March 28, in which we dropped the Madison Avenue line and suggested a lease of that portion of the Triborough route north of 42d Street.

Q. You have forgotten this statement of Mr. Harkness? A. No, I haven't forgotten it. I heard you read it this morning in your eloquent diction.

Q. Diction is not eloquent. A. It ought to have been if properly expressed.

Q. No, no, no. A. Then, elocution.

Q. "On one occasion during March, 1910, leaving the house of the Chairman of the Commission at two o'clock in the morning after attending an extended conference with representatives of the Interborough Company at which negotiations had been successfully concluded and the plan agreed upon—" A. I heard that this morning.

Senator Thompson.— There were one or two things that I took memorandums of as we went along which I want to straighten out in my own mind. Usually directors were paid for meetings? A. Yes.

Senator Thompson.— Do you mind saying how much it was? A. Some pay ten and some twenty, but the Interborough paid ten.

(Following questions by Senator Thompson.

Q. They had a regular meeting every week? A. Yes.

Q. There was much difficulty getting a quorum present? A. Except in the summer.

Q. But in March and April you had no particular difficulty? A. No.

Q. So that unless you wanted to act before a week expired, it wasn't necessary to clothe the Executive Committee with authority, was it? A. No.

Q. That was the condition on the 23d of March? A. Yes.

Q. I suppose you had come close friends on the Board? A. I suppose they all are.

Q. Didn't you get together and talk these matters over informally before you met? A. If I did, it was purely accidentally. They drift into my office usually before the meetings, and sometimes we have five or ten minutes. We sit there and talk, whoever comes in, until the meeting time comes.

Q. This particular matter that was up with Willcox and the Public Service Commission up in March, wasn't that talked over by you and somebody? Didn't you take advice informally from some of your folks? A. No more than I usually do.

Q. I understand, but didn't you? A. Not more than usual.

Q. I don't care about usually. A. I always do have them drop in, and if there is any particular thing I have on my mind, I tell them about it.

Q. Who were those that you talked with to take advice on the subway matter? A. The men that were the most active on our Board, Mr. Berwind and Mr. Reid were there—he was always prompt and always efficient and always a good director. There were also Mr. Freedman, Mr. Vanderbilt, Mr. Sullivan and, of course, Mr. Lane, living in Boston, was not there regularly.

Q. These records shown today show a well-defined plan of detailing a contract based on that letter of March 22. Now, evidently later developments changed your attitude? A. Between the 23d and the 28th?

Q. Something changed your attitude. A. Yes.

Q. What was it or whom did you talk with? A. There was no one that I can tell you that I talked with particularly, because I talked with all of them.

Q. Your bankers. A. I don't remember of the bankers. I don't know why I should have talked of them. I only talked to the bankers when we came to a definie proposition for money matters.

Q. How did you get in touch with Mr. Gaynor so that you talked to the extent that your minutes of your Board of Directors show you did on the 19th? A. But I don't remember how it came up as I had forgotten all about it until it developed here and then it occurred to me as I sat and talked and tried to get this association of ideas working that your counsel speaks of.

Q. Association of fibers. Mr. Gaynor is supposed to have been somewhat eccentric, but he wasn't eccentric enough to have completely changed his attitude at one meeting. A. I have no recollection of ever having been to see Mayor Gaynor except at the time that I called officially at the times I have mentioned.

Senator Thompson.— It was a pretty radical change between the time that he wrote that Pearson article in December, 1909, and the time he wanted to be arbitrator on the 19th of April, a big change, and pretty near a sufficient change for all purposes you wanted. A. I did not know how he wanted to arbritrate.

Senator Thompson.— He couldn't get any worse off than to have the plan that you and Willcox sat up half the night with. A. He couldn't get any worse off.

Senator Thompson.— And because Willcox was going to submit that and you were going to submit yours and he was going to arbitrate between you, he couldn't have gotten any further away than either one of you were, could he? A. Well, I don't understand that Mr. Willcox had anything that he was going to formulate or that I had anything that I was going to formulate.

Senator Thompson.— That was what you said to the Board, that Mr. Willcox was going to present his and you were going to present yours and the Mayor was going to arbitrate. A. I did report that to the Board.

Senator Thompson.— Do you think the Mayor was lying to you? A. If he had made us submit something and if he had gotten Mr.

Willcox to submit something, I have no doubt he would have arbitrated it.

Senator Thompson.— Then you couldn't have been any worse off. A. I wasn't talking about where I had gotten. I am talking about where he had gotten.

Senator Thompson.— You weren't very bad off with Willcox. He had entertained you well at his house, everything harmonious. A. Nothing personal but there were just as radical differences as there are between you and myself and there is nothing personal in that.

Senator Thompson.— Each one of you were contending for what you wanted and getting pretty near together and about the only thing that cost money that you were to part with was that Steinway Tunnel. A. It wasn't that at all. It was the disposition of the so-called Tri-Borough plan.

Senator Thompson.— I know you were getting away from that. The Tri-Borough plan was getting away if you entered into a deal with Willcox. A. No, it wasn't. That is just exactly where you are making all this mistake.

Senator Thompson.— If it wasn't, why did you spend all the night on it? A. Because I wanted to get him away from it.

Senator Thompson.— How could you get him away from it by keeping talking about it and putting it in better writing and getting it in better form, and giving him more satisfaction. A. I wasn't looking for a break; I don't think Chairman Willcox was looking for a break. We were both trying to see if there wasn't some neutral ground we could meet on. The stumbling-block with us and the thing he was holding out for on his part, as I understand it, was the Tri-Borough route and I recommended to our people that we didn't get control of either by lease or abandonment of at least a portion of it, and some way of putting in private capital as against the city constructed subway, which would be an immediate rival.

Senator Thompson.— I have here all about that. A. That is the reason that we didn't get together.

Senator Thompson.— Here are these things that annoy me. Now, Mr. Prendergast, a pretty able citizen here and a financier, first-class, isn't he? A. I guess he is.

Senator Thompson.— Consequently pretty careful about what he says and signs. A. I don't know anything about that.

Senator Thompson.— He is supposed to be, otherwise he would resign as comptroller if he wasn't careful that way, wouldn't he?

Mr. Quackenbush.— If everybody that ever said anything unkind of us in public office resigned, there would be no government.

Q. (Mr. Moss.) Including the strap-hangers.

Senator Thompson.— I presume the comptroller has to be careful because he is a financier and that is what they have to do because on the 5th of January, 1911, that during the suspension of these negotiations, the Chairman of the Public Service Commission, that is Willcox, was astonished to learn of the letter of July 5 addressed by the President of the Interborough to the Mayor. Willcox was astonished. Prendergast and Mitchel corroborated it on the 5th of January, 1911.

"Now, I assume that they knew astonishment when they saw it in the Chairman of the Public Service Commission. What could he be astonished about if he knew so much of it as he assumed to when he interrupted a few minutes ago. He must have thought that he was going to get his deal through. Do you see? What do you think? A. I think that he is the best man to testify on what he thought.

Senator Thompson.— But you don't answer. A. I don't want to say what is in mind—how did I know?

Senator Thompson.— When you left there at two o'clock in the morning, Willcox thought that scheme was going through. A. I don't know what he thought.

Q. (By Mr. Moss.) Willcox' counsel thought it was going through, he says so here. It lays there somewhere between you and them. A. I'm not in on that.

Q. Yes you are, A. I am testifying as to my own knowledge and my own judgment. They are perfectly competent to testify I think, as to their part..

Senator Thompson.— If that was not so, why did you go back the next day and take Willcox' annotations and run them into a new letter, which said that this is another offer, after accumulating everything and taking into account everything to date? A. Was that ever sent back?

Senator Thompson.— But you wrote it. A. That is all right.

Senator Thompson.— And you put it into your file and so far as the Interborough was concerned you thought that was a sufficient public document to keep it in your regular files. If anybody came in and inquired for it, why you would let them see it, wouldn't you? A. If they had a right to see it.

Senator Thompson.— The minutes of November 29, 1911, were offered in evidence some time ago. That shows the action of the board of directors in relation to the payment of five hundred thousand dollars to Mr. Morgan. I think that was offered at one time while you were on the stand, but only a portion of it and I want to read in the rest of the meeting:

> "A regular meeting of the Board of Directors of the Interborough Rapid Transit Company was held at the office of the Company, No. 165 Broadway, New York City, on Wednesday, November 29, 1911, at 10:15 o'clock A. M., pursuant to notice given in accordance with the by-laws.
>
> "Present, Mr. Belmont, Mr. Burwind, Mr. Andrew Freedman, Mr. H. M. Fisher, Mr. Edwin Hawley, Mr. William A. Reid, Mr. Theodore P. Shonts, Mr. Alfred S. Kitt, Mr. F. D. C. Sullivan, and Mr. Cornelius Vanderbilt. Mr. R. R. Rogers was also present. Mr. August Belmont in the chair. The minutes of the regular meeting of this board held on Wednesday, November 22, 1911, were read and approved.

The minutes of the regular meeting of the Executive Committee held on Wednesday, November 22, 1911, were read and approved, and on motion duly seconded it was resolved that the same be and they hereby are duly ratified.

"The rest is in evidence."

Adjourned until March 24th, at 11 A. M.

MARCH 24, 1916.

FRIDAY MORNING SESSION.

Examination by Mr. Moss:

DEPUTY COMPTROLLER WILLIAM ALEXANDER BROUGH, being duly sworn, testified as follows:

Q. I have asked you to present the subway contracts Nos. 3 and 4, showing the approval of the Corporation Counsel. A. I hand you contract No. 3 with the Interborough Rapid Transit Company and the City of New York; and Contract No. 4, the New York Municipal Railway Corporation and the City of New York. Those are taken from the files of the department.

Q. These are the original contracts? A. Those are the original contracts.

Q. I read the second page of Contract No. 3:

"The City of New York, by the Public Service Commission for the First District with Interborough Rapid Transit Company. Contract No. 3.

"Contract for additional rapid transit railroads, approved as to form this 19th day of March, 1913 (that being a printed form with the date written in).

"JOHN L. O'BRIEN,
"Acting Corporation Counsel."

From Contract No. 4, I read the second page:

"The City of New York, by the Public Service Commission for the First District with New York Municipal Rail-

way Corporation. Contract No. 4.

"Contract for new rapid transit railroads approved as to form this 19th day of March, 1913.

"JOHN L. O'BRIEN,
"Acting Corporation Counsel."

"(The signature of the corporation counsel is written in a printed form.)"

A. Do you care to have them left with you?

Q. No, we have copies of them. Have you the approval of the Corporation Counsel as to the certificates? A. I don't think the Corporation Counsel had anything to do with the certificates.

I produce an agreement between the Public Service Commission for the First District and the Interborough Rapid Transit Company, the Webster Avenue Line, Eighth Avenue and 162d Street, Queensboro Bridge Line and West Farms Subway connection.

Q. There is no approval by the Corporation Counsel on this paper? A. That is merely a certificate of the Public Service Commission.

There is a further certificate in regard to the Second Avenue, Third Avenue and Ninth Avenue additional tracks.

Q. That is not approved by the Corporation Counsel. A. Well, it may be approved by the Corporation Counsel, but it never was submitted to him as far as I know.

Q. There is nothing appearing in the paper? A. No. It comes directly from the Public Service Commission, as does the supplementary agreement in regard to trackage rights on the Seventh Avenue-Lexington Avenue Line, White Plains Road Line and Steinway Tunnel.

Q. That is in the same shape as the others so far as the absence of an approval by the Corporation Counsel is concerned? A. Yes. I have copies of those, if you want them.

Q. I wish you would let me have copies of the certificates.

(Witness dismissed.)

Mr. Moss.— I offer in evidence a subpoena that was served upon the Corporation Counsel, Lamar Hardy, together with two papers

returned with the subpoena. This subpoena required the Corporation Counsel to produce the Contracts, Nos. 3 and 4, for subways in the City of New York with all approvals or disapprovals, or letters of approval or disapproval and all correspondence concerning the same and memoranda of reference of said contracts to deputies or otherwise.

There is produced a letter of March 6, signed by Joseph G. Hagg, Secretary of the Board of Estimate and Apportionment, an original letter, dated March 6, 1913:

"Hon. Archibald R. Watson,
"Corporation Counsel,
"Sir:

"I transmit herewith certified copy of resolution this day adopted by the Board of Estimate and Apportionment, fixing Tuesday, March 11, 1913, at 10:30 o'clock A. M., as the date for consideration of the communication dated March 4, 1913, from the Public Service Commission for the First District to this Board, transmitting for approval proposed certificates, contracts and supplementary agreements for the construction, maintenance and operation of certain elevated railroad extensions, additional tracks and the construction, maintenance, equipment and operation of additional rapid transit railroads and future extensions to the same in the several boroughs of the City, and referring said communication and the accompanying instruments to the Corporation Counsel for his examination and to the Committee on Pending Transit Proposals for report.

"I transmit herewith a copy of the communication and accompanying instruments. I would request that you endorse your approval on each of the contracts, certificates and supplementary agreements and return same to this office as speedily as possible so that they may be ready for action by the Board at the meeting of March 11, 1913.

"Respectfully,
"JOSEPH G. HAAG,
"Secretary."

That is dated March 6, 1913. The other paper returned under subpoena is dated March 10, 1913, and as a copy of a letter

signed by John L. O'Brien, Acting Corporation Counsel.

"Board of Estimate and Apportionment, 277 Broadway, New York City.

"Sirs:

"A communication from the Secretary of your Board, dated March 6, 1913, has been received. It reads as follows:

"I transmit herewith certified copy of resolution this day adopted by the Board of Estimate and Apportionment, fixing Tuesday, March 11, 1913, at 10:30 o'clock A. M., as the date for consideration of the communication dated March 4, 1913, from the Public Service Commission for the First District contracts and supplementary agreements for the construction, maintenance and operation of certain elevated railroad extensions, additional tracks and the construction, maintenance, equipment and operation of additional rapid transit railroads and future extensions to the same in the several boroughs of the City and referring said communications and the accompanying instruments to the Corporation Counsel for his examination and to the Committee on Pending Transit Proposals for report.

"I transmit herewith a copy of the communication and accompanying instruments. I would request that you endorse your approval on each of the contracts, certificates and supplementary agreements and return same to this office as speedily as possible so that they may be ready for action by the Board at the meeting of March 11, 1913."

"I return said contracts, endorsed and approved as to form.

"Yours truly,

"JOHN L. O'BRIEN,

"Acting Corporation Counsel."

You will remember, Mr. Chairman, that when Mr. Watson testified, he said that that was the regular way of approving a contract, and approval of the form indicated approval as to the law, and you will notice that there are only four days between the dates of those two letters.

MR. JOHN L. O'BRIEN is sworn and testifies as follows:

Q. Mr. O'Brien, you were Assistant Corporation Counsel in March, 1913, were you? A. Yes, sir.

Q. And on March 10, 1913, you were Acting Corporation Counsel? A. Yes, sir.

Q. And you are the gentleman who signed the approval to these subway contracts which were offered in your presence? A. Yes, sir.

Q. Were those contracts examined in the Corporation Counsel's office to determine whether they were legal? A. Yes, sir.

Q. Who examined them? A. I, for one. I presume Mr. Watson did and possibly Mr. Harlow and Mr. Sterling.

Q. Was there a conference on the subject? A. My impression is that there was.

Q. And who participated in that conference, the gentlemen you name? A. Part of them.

Q. Were all those persons present at any one conference? A. Not that I recall. I don't recall the conferences distinctly enough.

Q. How long a conference did you have? A. I couldn't say. I don't remember.

Q. This letter which accompanied the contracts when they were sent to you was dated the 6th of March and your reply was dated the 10th of March. Were those conferences held in the interval between those two dates? A. I imagine they were held before the earlier date and after the earlier date, though I cannot say positively.

Q. Are you aware of any record in the office of the Corporation Counsel which would show that the time was spent and when this matter came to your attention? A. No, there would be no record there that I could recall, but I should imagine that the Public Service Commission would have a record of the first draft of the contract that was submitted, presuming there was a first draft.

Q. Do you remember what questions were considered? A. I do not.

Q. Did you pay particular attention to this contract? A. I did.

Q. About as interesting a contract as you had to examine, wasn't it? A. Well, I presume it was. I don't know anything interesting about the contracts. I mean, of pleasing interest.

Q. I didn't say "pleasing;" I would hesitate to use that word, but I did say, interesting from a lawyer's standpoint at any rate. A. Yes, sir.

Q. Long, involved, large in extent and scope, large amounts of money involved, years of operation. Do you remember any question that was considered in the conferences? A. I do not.

Q. Do you remember any legal question that was considered? A. I do not.

Q. Was there any legal question considered? A. I presume there was.

Q. Have you no recollection at all? A. I have not.

Q. Not a bit? A. No.

Q. How did it come that you signed the approval? A. I signed all contracts. When I say all, I mean 99½ per cent. or 99 9-10 per cent. of the contracts for the City. It came into my hands and left my hands signed.

Q. Were you Acting Corporation Counsel? A. I was.

Q. Was Mr. Watson in the office during March, 1913? A. I think he was.

Q. Did Mr. Watson take part in the conferences? A. I think he did.

Q. Are you sure? A. I am not.

Q. Did he express any opinion on any question of law? A. I presume he did. I do not know.

Q. Had the opinion of the Corporation Counsel been expressed upon the law of this contract previous to its being submitted to you? A. Not that I remember.

Q. Wasn't four days a rather short time to fully consider that contract? A. I didn't say it was only four days. I said that I presumed we had taken up the form of the contract before it was received at the office. It very often happens that way.

Q. The letter from the Secretary of the Board of Estimate and Apportionment requests you to endorse your approval on each of the contracts. It doesn't ask you to determine anything, but it requests you to endorse your approval — was that an ordinary form? A. It was not an ordinary form, excepting in this way, beform that time, I presume, we had approved a form of contract and delivered it to the Public Service Commission and the Board

of Estimate copy would simply be an additional copy for us to approve as to form, the same as we had approved the copy in the Public Service Commission's office.

Q. Well, there would be a copy of that in the Corporation Counsel's office? A. No, sir.

Q. Didn't you keep copies of such things? A. No, sir, my impression is that the contract came to us in a number of proofs at first, first proof, second proof, third proof, though I can't say that that was positively so.

Q. Can you say that any one in your staff passed upon the questions of law other than yourself? A. I would say that some questions of law involved in a contract of that kind would be passed upon by Mr. Sterling and some be passed upon by Mr. Harlow.

Q. Did Mr. Sterling go into any conference on this contract? A. I don't remember.

(Witness dismissed.)

Testimony of MR. WILLIAM B. ELLISON.

Examination by Mr. Moss:

Q. You were formerly a Corporation Counsel of this city, were you? A. Yes.

Q. And are a practising lawyer? A. Yes.

Q. Some time in the neighborhood of August, 1911, did you call upon the Mayor, Mayor Gaynor? A. Yes.

Q. Can you fix the date? A. It was in the latter part of the summer, I think about the last of August. I can't recall the specific date.

Q. And was the subject of your conversation connected with the subway situation? A. Yes.

Q. Will you please state in your own way the conversations you had with the Mayor, what you said, who was present, what he said? Was any one with you? A. Two other gentlemen were with me. They accompanied me to the Mayor's office.

Q. Who were they? A. A Mr. Pollock (I think they called him Dr. Pollock) and a Mr. Alexander.

Q. Who were those gentlemen? A. Of my own knowledge, I

don't know. They claimed to have some communication or connection with the Standard Oil.

Q. Now go ahead with the conversation, please. A. They came to my office and asked me if I would take them to the Mayor, Mayor Gaynor. They explained to me, before I went over there that they had a proposition they desired to make. The substance of it was that they had available some $500,000,000 that they were willing, or the people whom they represented were willing, to make available to the City for the purposes of the subway construction and the waterfront improvements that were then under consideration. As a matter of compensation, they were to be paid a percentage or commission on the actual cost of construction, which was to be left entirely in the hands of the city's engineers.

My recollection is that two or three figures were stated. I think 10, 12 and 15 per cent. were discussed. I am not so sure of the 15 per cent.; I know that 10 and 12 per cent. were discussed. At that time, a great many of the large building operations in New York were conducted on that plan. Mr. Willis, and a number of other railroad operators did their work upon a percentage basis, the owner having his own engineers if he so desired and the compensation to the builder being a percentage of 10 or 12 or 15 per cent. on the actual cost of construction.

The proposition appealed to me, knowing something as I did about the financial condition of the city, and I took them over. We had a conference with the Mayor. I introduced both Mr. Pollock and Mr. Alexander to Mayor Gaynor and asked them to restate to the Mayor the proposition as they had made it to me, which one or the other or both of them did. After hearing their restatement, and it, being in perfect harmony with the statement as made to me, I then began a discussion of it with Mayor Gaynor. He listened, I think understood it, and then asked me if it could be legally done. I expressed an opinion that if not, as the law then stood, certainly with some additional legislation, and that I thought there wold be no difficulty in getting it.

It meant complete construction, the furnishing of all of this money without a call upon the City Treasury, and the proposition looked to me to be a very favorable one.

Q. And a city-owned road? A. A city-owned road. In fact, the only thing that the offer involved was that the gentlemen who furnished this money should be given a lien upon the work as it progressed, and they expressed their intention to incorporate a company, treat that lien as its asset and issue their bonds upon that lien, or, upon that as an asset, and raise all the money that it was necessary to raise.

Senator Thompson.— You say $500,000,000? A. $500,000,000 was the amount mentioned.

Senator Thompson.— That would have constructed subways all over this big city everywhere they wanted to go? A. My understanding of the proposition was that it would construct all of the subways and make the waterfront improvements that we deemed to be very important at that time.

Senator Thompson.— But, I say that would have given plenty of subways wherever they were needed in this city? A. That was my understanding.

Q. (By Mr. Moss.) As to the commission which they spoke of, I understood you to say that they were not insistent upon any particular figure but were willing to enter into conferences on the subject as to what that commission should be? A. My recollection was that the lowest figure stated was 10 per cent and that there was a fluctuating somewhere between 10 and 15 per cent. My recollection is that along about 12 per cent was lodged in their minds.

Q. Was that stated as an absolute requirement or subject to negotiations? A. Subject to negotiations.

Q. What was the result of that conference? A. The Mayor did not approve of it. The Mayor questioned its legality and made finally a suggestion to the effect (which I think may have been a matter of humor) that he saw one way that it could be accomplished, and that these people could loan the money to the Interborough and they could go on with the construction of the subway, but I don't think his Honor was serious in that, because we all smiled.

Q. He did mention the Interborough, that was mentioned in the interview? A. Oh, yes.

Q. And it was the only alternative that he proposed? A. Yes, that was all I think.

Q. Did they express any willingness to loan money to the Interborough? A. None other than you could spell out from a general smile in which I joined.

Q. How long did the interview last? A. Oh, I think we were there from fifteen minutes to half an hour, maybe a little longer, because it comes back to my mind now that the Mayor brought out some rough plans or routes and entered into quite an elaborate statement of what they were seeking to accomplish, that is, what the City was seeking to accomplish. I remember now he laid the routes for us and spoke generally upon them or about them, but there was no participation in that part of the conversation by those whom I had with me. In other words, they were indifferent to where the routes lay.

Q. Did the matter ever come up again? A. I can't say of my own knowledge. I was informed that they had another conversation or two with the Mayor, but of that I am not positive, because I was not present.

Q. But, so far as you have information, it died? A. Yes, it was abandoned.

Q. Was any other public official called into consultation? A. No, not so far as I know, not while I was there.

Q. You were not Corporation Counsel at that time? A. Oh, no, I think I went from the office in July of 1907.

Q. There was no conference with the Public Service Commissioners or with the Comptroller or the President of the Board of Aldermen or the President of any borough, nothing of that kind? A. So far as I know, the proposition was submitted to no one other than to the Mayor.

Q. It just died there with the Mayor? A. I think so.

Senator Thompson.— What did this 10 per cent. include? Was that the risk they ran in construction and the money? A. For the use of the money and all the services they would render, which services were to be subject to the direction and control of the city's engineers.

Senator Thompson.— But, they were to do the construction? A. Completely.

Senator Thompson.— And to furnish the money, materials, labor, everything? A. Yes, everything.

Senator Thompson.— And the security they asked was to be permitted to take a lien on whatever improvement they created? A. Yes, I think I suggested the proposition that the law would give them a lien anyway if their contract was accepted.

(Witness dismissed.)

Testimony of MR. WILLIAM R. WILLCOX, after having been duly sworn.

Examination by Mr. Moss:

Mr. Moss.— Before I question Mr. Willcox, I just want to ask Mr. Quackenbush a question, as he sits here. Mr. Quackenbush, after these contracts were let in 1913 to the Interborough, were the relations between the Mayor and the officrs of the Company particularly friendly and intimate, as far as you know?

Mr. Quackenbush.— As far as I personally was concerned, they were, yes, sir.

Q. Were they before the contracts were signed? A. Well, you see, I knew the Mayor as a judge, and, speaking for myself, my relations with him were always agreeable and pleasant.

Q. You had a special personal relationship with him different than the others? A. Yes, because as a lawyer, having a good deal of business in the court over which he presided, I knew him.

Mr. Moss.— I desire to read this in evidence:

EXHIBIT NO. 1.

"New York Railway Co., 165 Broadway, New York.
July 24, 1913.

"Dear Mr. Mayor:

"Your letter of July 22d received today.

"So the Dock Commissioner told you we were willing to take 2½ cents and leave the city 2½ cents, did he?"

Q. That was with reference to the connection of the Municipal ferries with the subways? A. Not the subways, the surface lines.

Q. I will continue with the letter:

"Well, then it is a good thing he took the next ship to Europe. Don't you believe it. And, after listening to my talk, do you think that would be a square deal?

"In the name of that humor which underlies your occasional appearance of austerity, please permit me to ask you, in the language of the day, that you 'quit your kiddin.'

"We will carry them from 159th Street to South Ferry, ten and a third miles for three cents, if your Municipal Ferry will carry them from South Ferry to St. George for two cents."

This is addressed to:

"Hon. William J. Gaynor, Mayor of the City of New York and its Dominion, Staten Island, beyond the sea."

Examination by Mr. Willcox:

Q. Mr. Willcox, I want to ask you about the conversation at your house on the night of March 22, 1910. Will you tell me who were present? A. Mr. Colburn, Mr. Harkness, Mr. Shonts, and I think Mr. Rogers was also present.

Q. What was the subject of that conference? A. The general subject was concerning an offer which had been under consideration between Mr. Shonts, as President of the Interborough Company and myself as Chairman of the Public Service Commission, concerning the terms of an offer which we hoped would be submitted to the Commission when—

Q. Was that letter, which has been used in evidence and dated

March 22, 1910, before you in that conference? A. I should say that that is one of the copies that we discussed around the table.

Q. And does it have some of your pencil marks? A. Yes, some of my handwriting.

Q. When was that handwriting of yours put upon it? A. I should say it was the evening in question.

Q. How late did that conference last? A. Until about two o'clock in the morning.

Q. I show you from the files of the Public Service Commission an original copy of a letter purporting to be signed by you, dated July 7, 1910, and ask you if you remember it? A. I haven't read every word of it, but I think I recognize the letter as the letter of July 7.

Q. There are certain portions of it that I want to get in evidence and will ask you to follow it with me. Do you recall that in that letter you said:

> "In the negotiations for the construction and operation of these lines, the following terms and conditions ultimately came to be considered as the proper basis for an agreement:
>
> "First, the cost of constructing and equipping these lines to be borne by the Interborough Compony without the use of the City's credit, the City to provide any real estate, except that used for terminals and storage yards, the ownership and title to all lines to be in the City, etc."

A. Yes, this is my letter, and I think that is correct, except in reading the memorandum since it has been here under consideration, I have some doubt at the moment whether the equipment was to belong to the City in the memorandum of March 22.

Q. All right, you reserve that as a possibility? A. Yes.

Q. Now, this offer of July 5, 1910, was the first intimation that you had of a departure from the plan outlined in the tentative letter of March 10th for the use of the Company's money, isn't that so? A. Well, it is the first offer that I had received that year from the Interborough Company, and when our negotiations ended in April, they ended the consideration of the matters as set forth in the memorandum dated March 22d.

Q. Well, I read you from the second paragraph of your letter

of July 7th this—referring to Mr. Shonts' letter of July 5, 1910, you say:

> "The present letter of Mr. Shonts is remarkable chiefly as indicating the radical change of position of the Interborough Company from that taken in the recent negotiations with the Commission.
>
> "After the rejection of the Interborough's latest proposals in November, 1909, many conferences were had with the President of the Interborough upon the subject of subway extensions. The lines which the Commission believed should be built and which practically became the basis of negotiations as to terms were as follows:"

(And then follows the lines.)

A. That is true, from December of 1909 down to the following March, Mr. Shonts and I were in negotiations or conference regarding the subjects as set forth at the beginning of this letter.

Q. Now further you say:

> "As you know, these negotiations were very nearly brought to a successful conclusion, but at the last moment the directors of the Interborough Company objected to the proposed terms. We have understood that the terms were satisfactory to the interests that the Interborough Company expected to finance these operations and that such interests have not changed their position."

A. That is what I understood.

Q. Did you understand that when the meeting broke up at two o'clock in the morning on March 22? That is, that it was satisfactory to the interests named up to that point? A. I can't say what was in my mind at the moment, but I did have in my mind during the conferences with Mr. Shonts during that winter, during those two or three months, that the negotiations which we were discussing if brought to a favorable conclusion would result in a program which had already been agreed upon as far as the finance was concerned.

Q. Well, what basis had you for your writing in this letter of July 7th to the Mayor that you had understood that those terms of

the Interborough wherein they agreed they were to furnish their own money were agreeable to the persons that were financing the Interborough? A. It was based upon my conversations with Mr. Shonts and the general impression that if we came to a conclusion growing out of our conferences, that the matter was already financed.

Q. By those interests, did you mean J. P. Morgan & Co.? A. I presume I had that in mind, because I knew that they had financed the Interborough previously in some of their matters.

Q. Did Mr. Shonts tell you that he was in communication with the Morgan firm? A. I can't recall any detailed conversation where he gave me that information. As I state, this is based upon the general understanding that I had, that if we arrived at a conclusion so that an offer should be made that was satisfactory, that they knew where they would get their money.

Q. Well, you understood in March and April that Mr. Shonts was perfectly agreeable to the genaral plan as outlined in this letter of March 22? A. I assumed he was.

Q. He said nothing to the contrary, did he? A. There were parts of it that he didn't come to any agreement with me on.

Q. But, on the main proposition of using the Company's money, there was no dispute? A. Not about that, but the point that I want to make clear, if you will allow me, is that I don't want to say that Mr. Shonts' mind subscribed to every point in the memorandum; mine certainly did not. You need to know how this offer came to be brought about in order to understand, and I will state it if you care to have me. In 1909 there were two offers, as you will find by the record submitted by the Interborough, for building extensions to the subway system, and you will also find in the record the answers that the Commission gave why those offers couldn't be accepted. The last communication, I think, from the Commission was in November declining the offer of the Interborough Company sometime that fall. You will also remember that at the election that year, 1909, the constitutional amendment had been voted upon whereby the debt limit was increased, and we were proceeding with plans for the Tri-Borough line which would be an independent system presumably. There was a great difference of opinion among

people in this town as to whether we should have an independent system or as to whether the extensions of the present city-owned subway should be made. My own feeling had always been that the present city-owned line, which was not a complete system but only a part should be made a complete system with a five-cent fare over the whole line, if such a bargain could be made, but up to that time we had been unable to agree upon terms with the Interborough Company. Accordingly, with full information to the then Board of Estimate, we proceeded with plans for the Tri-Borough route and to let contracts. That work was then under way on the Fourth Avenue Subway. Sometime in November or December in a conference with Mr. Shonts, I said to him that it seemed to me that there should be one last effort made to see if his Company (and I felt his Company and the Commission that I represented owed it to the people of the City) could not agree upon an extension of the present subway.

Q. Where was that conversation? A. It was probably in the office of the Commission. It may have been in my home. We conferred during January and February and up to the 22d of March, and Mr. Shonts agreed with the idea, as I stated to him, of him making just as good an offer as he could, and then if we could accept it, all right; if we couldn't, we would give our reasons and the public would understand where his Company stood and where the city authorities stood, because, as I urged him, we then had the money to build the subways, an independent system, and we were moving ahead with the plans and we were not going to stop the work on those plans during this consideration. We had spent two years trying to get an offer that was acceptable, and if anything was to be done, then was the time to do it. So, we worked hard up till March, with the result of getting together on that evening in question to discuss the various points in any offer that would be made, and when Mr. Shonts left that evening it was with the idea that he would take this matter up with his people. Shall I go on from there?

Q. Yes, but I will ask you a question there — you said, and I called your attention to it a moment ago, "As you know, these negotiations were very nearly brought to a successful conclusion, but at the last moment the directors of the Interborough Company

objected to the proposed terms." Now, how do you know that the directors did that? A. Mr. Shonts came to me within one or two days, I would say from recollection, after the interview at my house in the evening and said, "I have had this matter up before some of the members of my Executive Committee" — (I assume they were directors; I think his executive committee is made up of directors) "and they don't take kindly to this proposition that we have been talking about, and therefore I cannot present it to my Board at present if ever." He said, "I will not present it to my Board unless the Executive Committee are unanimous for it."

Q. What did you say to him about that? A. I told him that I was very much disappointed and asked him if he wouldn't make a further effort. He said he would. I said, we are proceeding with the plans on the Tri-borough and I am deeply disappointed if we can't get another offer from you people at this time in order to carry out the idea which I have had all along, since the debt limit had been extended and since our plans were nearing completion for the Tri-borough, namely, that the Interborough Company should put its best foot foremost before we dropped these negotiations entirely.

Q. Did he tell you what it was these directors objected to? A. No, in a general way they objected to this plan that we talked over.

Senator Thompson.—Where was that conversation? A. At my office. I am very sure it was at the office in the Tribune Building.

Senator Thompson.— Do you remember it perfectly? A. I remember he came to me in the afternoon a day or two afterwards, and I am very sure it was there, though he might have stopped in at my home. I want to say right here that many of these conferences took place at my home.

Senator Thompson.— Your salary at that time was what? A. The same as it always was in the Public Service Commission, $15,000 a year.

Senator Thompson.— I just wanted to call your attention to the difference in memory of a $15,000 man and a $100,000 man right

on this point. A. This was the one thing that I was devoting my entire time to at that time. I ought to remember it.

Senator Thompson.— You never got any extra reward for this work that you did? A. Nothing but the reward that I think is given me by the people of New York City who believe that I negotiated the best contract that the City has ever had. (Applause.)

Senator Thompson.— We will allow that applause this time, but hereafter we won't allow any more except on field days when we are having hearings. A. I didn't mean to bring that out, Senator, because it is the only reward that I know anything about.

Senator Thompson.— You think it is the best contract that New York ever had, do you? A. I do, in its magnitude, in its far-reaching benefit to the people of this town.

Senator Thompson.— I have asked that of one other Public Service Commissioner. I want you to tell me what is the big thing that the City gets? A. They get about three times the transit facilities they have now. We have brought in all of the outlying districts by rapid transit into the center of the city. We have done it at one time, at a time when the City's financial strength was not great enough to pay for this large system, and we did it on terms which I think commend themselves to any business man.

Senator Thompson.— Do you like prior determinations? A. I have nothing to do with prior determinations.

Senator Thompson.—Do you think it is proper to charge these things to the City that have been charged under the contract? A. I should want to examine those things, but you are wandering from the subject.

Senator Thompson.— No, I am asking you what thing the city got by means of these contracts that made them so great. The reason I have asked you this question is this, every man in the City of New York who participated in the making of these contracts ever since we have been here has said, whenever making a statement for "public consumption," "These great, dual subway contracts, which are the greatest thing that New York ever had."

but without details, and as we go into these details and as we compare them with other contracts, we don't find any particular benefit that the City of New York got out of it that it couldn't have gotten with its own money and more. Now, under those circumstances, when you, who participated in them, are asked in detail what the City got (except, of course, that they got the subways, they paid for them and they did get them and they will have the use of them some day after we are all dead), we want to know what was the big point of advantage over building their own subways. That is what I want to know. A. All right, sir. Now, in the first place, if you lived in New York, you would know that the present transit facilities are very inadequate.

Senator Thompson.— Yes, we all understand that, but it is perfectly apparent that you can build subways if you have the money, and you had the money. A. In the first place we needed more transit facilities. We went ahead with the Tri-borough road and would have built it with city money, but we had expended all of the city's available money, or about $125,000,000. Instead of that, we brought in here $125,000,000 of private money which goes to build not a private line or a privately owned line, as has been stated here, but a city-owned line with city-owned equipment from the day the money is spent, and all we pay for that private money as distinguished from the city money, is about 1% a year more interest and 3% discount upon the bonds. The question before us was whether we would give the City adequate service by paying this additional cost of the money or whether we would build simply $100,000,000 worth of lines and give the City a very inadequate service. There is no answer to that except one.

Senator Thompson.— But, all this money comes out in a preferential. They get their money for sure. A. If the City had had the money, I woud rather the City would have spent all its money, because it would have been less interest to pay and less 3 per cent. discount, but what we had to face was that we were going to build transit facilities enough for this City, whether we would build up to the extent of our borrowing capacity or whether we would pay this extra 1 per cent. with the 3 per cent. discount and get twice as many roads.

Senator Thompson.— But, you think when the City owns the title and doesn't get it for 50 years or 85 years that the City has it just the same? That satisfies you, does it? A. The City can get every foot of line that is built under these contracts in ten years.

Senator Thompson.— How? A. Either by paying what has gone into the road in private capital or by bringing in another operator who will pay the money himself.

Senator Thompson.— How are they going to pay the money? A. They can pay the same as they would in the first instance.

Senator Thompson.— Where are they going to get it? A. If they have the money.

Senator Thompson.— You have used up the entire money in building. A. But there is ten years. Furthermore, if this contract is as good as some of you say it is for the corporations, then in ten years there will be plenty of operators willing to come in and take it over.

Senator Thompson.— How can another operator take it over under this contract? A. Under the contract they can.

Senator Thompson.— I would like to see that in the contract. A. I will find it for you.

Senator Thompson.— We can let that go till later. Didn't you ever see, Mr. Willcox, that they purposely used all the city's money up to the debt limit as near as possible so that you couldn't recapture it at the end of ten years? Did you ever see that in the negotiations? A. We were going to use every dollar of the city's money in the Tri-borough route —

Senator Thompson.— Just answer my question. A. Who did you mean by "they"?

Senator Thompson.— Didn't you ever see that the people representing the railroads wanted to get all the city's money available into this thing, so that the city would have no available money at the end of ten years? A. I don't know what their purpose was.

Senator Thompson.— Did you ever notice that? A. I never noticed it, no. I wanted to get all the lines built that I could with private money and with city money.

Senator Thompson.— That is all right. Everybody agrees with you on that. A. And we did it, — I came back again — under the best contract that the City of New York has ever entered into.

Q. (By Mr. Moss.) What will the city do when you have to put $5,000,000 or $6,000,000 into the tax budget? A. Why guess at it. You have no figures to warrant anything of that kind except guesses.

Senator Thompson.— We have got figures.

Q. (By Mr. Moss.) Do you think real estate is going up or going down in the next five years on account of this subway? A. Real estate is going up in the outlying districts.

Q. What about poor old Manhattan? A. That isn't because of the subways. The property values of the dry goods district have been steadily going down; that certainly wasn't because of the subway.

Q. But, if you have to put five or six million into the tax budget five or six years hence — Oh, never mind about that, I want to get back on the track.

Who were the directors that objected to Mr. Shont's plan? A. I don't know.

Q. Didn't he tell you? A. He said he had talked with his Executive Committee.

Q. Didn't he tell you who they were? A. He told me some of the members of the Executive Committee, and whether I can guess right or not I don't know.

Q. Give your best recollection. A. There were Mr. Vanderbilt and Mr. Hawley and Mr. Berwind that I used to see a good deal.

Q. I don't ask who you saw, but did Mr. Shonts mention the name of any directors who were opposed to the plan which involved the use of the Interborough's money? A. No.

Q. Did he mention the name of Mr. Freedman? A. No.

Q. Did he mention the name of Mr. Berwind? A. I don't think he did.

Q. Did you ask him who the directors were that were opposed? A. I did not.

Q. Why didn't you? A. Because I didn't care.

Q. Wouldn't you have undertaken to have met them and talked with them? A. I would if they wanted to see me.

Q. Didn't you want to see them? A. I talked with Mr. Shonts as the representative of the Company.

Q. Was he the only one? A. Yes.

Q. And when you ran on a rock, you didn't try to help him off? A. It was not my business.

Q. Did you ask him if he disagreed? A. I didn't ask him.

Q. Why? A. I didn't care. What I wanted was an offer if they wanted to put one in.

Q. In this same letter you say:

> "In view of the enormous profits that the Interborough is making from the city-built and city-owned railroad, we think the Company is under corresponding obligations to serve the public by extending its lines and giving additional facilities, and we consider that the terms which were under consideration in the previous negotiations are generally in accord with that obligation.
>
> "We understood that representatives of the City have been in consultation with the Interborough Company for some time, but, after reading Mr. Shonts' letter, fear that they were not thoroughly acquainted with the history and scope of the previous negotiations."

Now, what representatives of the City did you understand had been in consultation with the Interborough Company for some time? A. I knew nothing about it until July 6th, the date of the Mayor's letter. You have that there. On that day, Mr. Shonts came to me and said the Mayor had had two representatives, Mr. Ingersol and Mr. Kingsley Martin, at his office for several weeks going over books and papers. This was, you remember, on the 6th of July. He further said that at the request of the Mayor he had submitted an offer. Well, I was quite put out. I can't remember just what I said, but I turned very strongly upon Mr. Shonts and said that I didn't think that it was the pro-

per thing for him to submit an offer for subway building to the Mayor of the City, when the Public Service Commission was the body of original jurisdiction in this matter, and when he had had his negotiations with the Public Service Commission, or, with me, as representing it. Then I called his attention to the fact that in the previous December my understanding was that we were to talk this thing out to see whether an offer could be presented or not, and I resented the idea of negotiations being taken up with another body at that time.

Mr. Shonts said that, of course, as long as the request came from the Mayor, he felt he had to send the offer to him, but he said, "I have sent you a copy," which he did, and you will find it in that report. We answered it the next day.

Q. Now I want to ask you about the meeting you had in the Mayor's office, if we understand it correctly. A. A day or two after the meeting on the evening of March 22d at my house, Mr. Shonts said to me that the offer couldn't go through. Then Mr. Shonts, I think, went out of town. At least he told me he was going out of town, and on his return — I should say it was a matter of two or three weeks, though I can't remember exactly — he came to see me and he said, "I don't think we can do anything about that." I was in hopes all this time that this offer would still be presented, and then I said to him, "Mr. Shonts, I think that you and I ought to go over and see the Mayor and tell him that our negotiations haven't come to anything, because I have kept the Mayor informed during the winter from time to time of my talks with you and that I hoped an offer would come from your Company." Now, whether we went that day to the Mayor's office or not I don't know, but about that time we went to the Mayor's office. I heard Mr. Shonts' testimony the other day, and I presume that is about right — I think he said it was the 19th of April.

Q. It wasn't in his testimony. We saw that in the minutes. A. It was after he came back from the West, and I should say it was two or three weeks after this statement to me.

Q. Have you a distinct recollection of being in the Mayor's office and seeing the Mayor with Mr. Shonts? A. We went to the Mayor's office, Mr. Shonts and I.

Q. You and he went together? A. Yes, we went together, and I said to the Mayor, in effect that Mr. Shonts and I couldn't come to any understanding and I thought he ought to know it from both of us.

Q. Did the Mayor suggest that he would act as an arbitrator? A. I heard that the other day, and I don't want to say that that conversation didn't take place, but I have no recollection of it.

Q. How did that meeting come about? How was it arranged? A. I don't think it was arranged; at least, I have no recollection of it. Whether I went from my office over to the City Hall or whether I called up Mr. Adamson to arrange for our coming I can't tell. I have no recollection of it.

Q. Do you remember how you went, by what conveyance? Did you go in a car? A. No conveyance. I walked across. They didn't have many automobiles then in the Commission.

Q. But you and Mr. Shonts went together? A. That is my recollection.

Q. Now, you must have arranged to go together? A. I have told you all I can tell you about it, Mr. Moss. I said to Mr. Shonts that we ought to go over and see the Mayor. Whether we went that day or whether I called up his Secretary and said we would come in the next day, I have no recollection.

Q. Was it in the City Hall? A. Yes.

Q. How long were you there — A. I never saw Mr. Shonts and the Mayor together, as I remember it, in any other place.

Q. Then there was only one interview to remember? A. Yes.

Q. How long were you there with the Mayor? A. I can't tell.

Q. Was it a short interview? A. A short interview.

Q. Mr. Willcox, there is a little matter that we might as well clear up so that there shan't be any misunderstanding in the community about the attitude of yourself toward the Committee or toward the Chairman. I call your attention to a certain interview attributed to you in the newspapers in which it appeared from the printing of it that you have referred to the Chairman — I hate to use the Ananias term, it has got too common. A. The story you refer to appeared in different forms.

Senator Thompson.— As far as I am concerned, they can use it all they want to.

Mr. Moss.— What you objected to was the statement attributed to the Chairman that you had appeared for the Interborough Company, wasn't that it? A. Well, I can tell you the whole thing —

Q. Wasn't that the substance of what you objected to? A. I objected to the statement that was attributed to him for a second time, after I had written him a letter.

i Q. But was that the statement connecting you with the Interborough? A. As counsel and as successor of Mr. Quigg and Mr. Quackenbush.

Senator Thompson.— Right there, may I interject, that the letters that you people write and the telegrams that I get from New York have a habit some way of getting into the newspapers, and then I get them about two days afterwards.

Q. (By Mr. Moss.) Didn't it occur to you that the Chairman was mistaken only in the Company that he mentioned? A. I don't know what you mean.

Q. Well, you seem to think he charged you with being connected with the Interborough. Wasn't it the Consolidated Gas? A. I don' know what was in his mind. I can only tell what was published in the papers.

Q. Didn't it occur to you that he might have been thinking of the Consolidated Gas? A. It wouldn't have been true then. I am not under retainer by the Consolidated Gas.

Q. When was it that you appeared before the Public Service Commission for the Consolidated Gas Company. A. I appeared for the Consolidated Gas Company in its bond issue for $50,000-000 in which I was counsel, and the case was closed sometime over a year ago, I should say.

Q. When did it begin? A. I can't tell exactly, a few months before that. I think I was retained about seven or eight months after I had left the Commission. That is a guess, but I can give you the exact date.

Q. It was a $50,000,000 bond issue, wasn't it? A. Yes.

Q. Where the motion was to be permitted to capitalize surplus earnings? A. I don't think so.

Q. Largely so? A. I don't think so.

Q. Wasn't it surplus earnings that they wanted to capitalize? A. I don't think so.

Q. Do you know? A. I can tell by looking at the application.

Q. But, from your recollection of that matter? A. I should say it was not.

Q. Had the Consolidated Gas Company been involved in various matters while you were Commissioner? A. What do you mean by involved in various matters?

Q. That is, before the Public Service Commission, applications, complaints and various things? A. Probably there were.

Q. Gas rate complaints? A. We had no gas rate complaint regarding the Consolidated, because the law had fixed the rate at eighty cents. There was now and then a complaint about a meter of some kind.

Q. There was a request for permission to increase the bond issue while you were Commissioner? A. I don't recall it now.

Q. Didn't you pass some such request as Commissioner? A. No, sir.

Q. For a different amount, but of the same nature? A. No, sir, I am very sure not.

Q. Was there any business before your Commission while you were Commissioner involving the Consolidated Gas Company? A. Why, they were under our jurisdiction.

Q. Their reports had to be examined to see whether they were true? A. Had to be examined by the Accounting Department.

Q. Didn't it occur to you when you read the newspaper account of the Senator's remarks that he might have been thinking of the Consolidated Gas Company and not the Interborough? A. Not at all, because the Consolidated Gas Company had nothing to do with this investigation and the matters that were then up.

Senator Thompson.— You knew that the Consolidated Gas Company practically owned the New York Edison Company? A. The two are practically interlocked.

Senator Thompson.— You had rate cases pending before you with them? A. With the Edison Company?

Senator Thompson.— Both of them. A. There was a case before us when I left the Commission.

Senator Thompson.— All these electric light complaints and rate cases were undecided? A. Let us not misunderstand each other. All of these Public Service Companies were under the jurisdiction of the Commission.

Senator Thompson.— All of these public utilities corporations are more or less connected with each other? A. I presume that is so.

Senator Thompson.— For instance, the Consolidated owns practically all of the stock of the New York Edison, which is the big electric light company here? A. There is a very close relation. I don't know who owns who.

Senator Thompson.— One of the reports of your Commission claims that they own most of the stock. Then, for some reason or other, (the New York Edison sells electricity) the Interborough won't sell the electricity that they have.

You don't know what the relations are that prevent the Interborough Railroad Company from refusing to take a profit of $1,000,000 a year? A. I should think it would be very foolish to do that.

Senator Thompson.— You don't blame me for thinking that everything is all kind of together, when I find these facts? A. But, I should at once find out whether it is so.

Senator Thompson.— It is hard to get information fast enough so that we can do it all in one day.

Mr. Moss.— I don't want it to be thought that I have the slightest suspicion that Mr. Willcox isn't perfectly honorable in this subway business, but I do say, Mr. Chairman, if you will let me, that men ought not to come here and then go to the newspapers calling folks liars, because they may get into trouble. I want Mr. Willcox to get out of that class because up to date, the people that are asking explanations to be made are the very fellows that ought to make explanations. A. Now, as far as I am concerned, I am perfectly willing and able to take care of myself as far as any statements I make. I understand this incident, and I think you understand it without delivering me a lecture

here. I want the auditors to understand that on Saturday, when I read in a certain clipping that this statement had been made, I wrote what I think was a very courteous letter to Senator Thompson telling him facts and calling his attention to the fact that I not only was not counsel for the Interborough but had never received one penny from them in any way. I sent the letter to the Biltmore on Saturday. The Senator was here Saturday and was here Monday. I don't know whether he got the letter or not.

Senator Thompson.— I got the letter last night. A. But, on Tuesday, having sent a letter to Senator Sage on the appointment of Mr. Whitney, there was another statement that I was counsel of the Interborough and the successor of my friend Quackenbush and Mr. Quigg. Inasmuch as I never had any money from them and that was being used to lessen, if it was said by the Senator, the effect of my letter, I sated to the newspaper men on Wednesday, when they kept coming after me, that it was not true that I had any retainer from the Interborough, that I was to be the successor, as far as I knew, of Mr. Quackenbush and Mr. Quigg, and that if Senator Thompson received my letter or any one else had read my letter and then made the statement, that they were telling that which was false, and any one who said it told that which was untrue.

Mr. Moss.— Don't think I am reading you a lecture. A. You did. You told me that I shouldn't make these statements. I want to tell you that I shall make them again.

Mr. Moss.— I don't want you to get into that class of people who, when they use that term, are trying to cover up something. I think I am doing you a service. A. I stated in the beginning that nobody lied unless they had read my letter. I would make that statement just as strongly now as I ever did.

Mr. Moss.— Almost every man who has done that thus far has attracted the lighning thus far. A. I don't appreciate your good offices right now.

Senator Thompson.— What is there bad about suggesting su-

ceeding Mr. Quackenbush? A. I am not going into the question of badness. I wish I drew his salary, but the fact was I was not, and as long as it wasn't and isn't true, what is the use of bringing it up and keep reiterating it?

Mr. Moss.— I think the Senator simply got one corporation mixed up with another. I told him so when it happened, though it is the same thing pretty nearly. A. I don't want to say that since I have been out of the Commission that I haven't appeared for corporations, and I wish I had appeared for more.

Senator Thompson.— The idea is that you are perfectly willing to succeed Mr. Quackenbush when he wants to lay down but you don't want to succeed Mr. Quigg?

Mr. Moss.— Mr. Quigg is doing a perfectly honorable business for this corporation at $20,000 a year, trying cases every day.

Mr. Willcox.— It is simply a question of fact. I am not talking about one or the other.

Senator Thompson.— You don't have to succeed either one of them if you don't want to. Will that be all right? And if anybody wants to call me a liar, it's all right; I don't object.

Q. (By Mr. Moss.) Did you hear anything about the proposition that Mr. Ellison talked about this morning? A. I never heard of it. Today was the first time I ever heard of either the man or of the proposition.

Suspension until two o'clock.

AFTERNOON SESSION.

Mr. Quackenbush.— I accepted service from Mr. Perley Morse's firm yesterday of a package of subpoenas for the accounts of the lines going to make up the System which I represent, technically calling for the appearance of all those things here today. Of course the understanding is that will be gotten out and turned over to Mr. Morse. Mr. Edward A. Mahar, Jr., representing the Third Avenue, is in exactly the same situation.

Testimony of M. HENRY B. SEAMAN. (Mr. Seaman is sworn.)

Examination by Mr. Moss:

Q. You were formerly Chief Engineer of the Public Service Commission? A. I was.

Q. Between what dates? A. From December 1, 1907, until October 1, 1910.

Q. You showed me a statement a few moments ago, and I invite you to make that statement just as you showed it to me. A. While I was out of town last week, the newspapers published a statement purporting to come from William R. Willcox, formerly Chairman of the Public Service Commission, as follows: "Mr. Seaman could not get along with any Bureau or Department of the Commission." This statement is false and cowardly and is apparently inspired either by anger or by fear. It is false because I had no trouble with any bureau or department of the Commission except in the effort that I should run my own Department as its Chief. This would have been accorded and insisted upon by any Chairman of competent executive ability. It is cowardly because for the six months to which he refers, I did the work of four busy men. I was refused help which I had requested and received only commendation from the Commission for the work which I was doing. He was evidently inspired by fear, because a condition had confronted the Commissioners which had made them very anxious. A subway was designed with pipe galleries at an estimated cost of about $116,000,000, and in revising the plans and eliminating pipe galleries, the Committee, composed of members of the Commission, had produced a subway with 30 per cent. less capacity and at the same time had increased the cost from $116.000,000 to $118,000,000. When the Commission recognized its failure at revision, it endeavored to foist this failure upon the Chief Engineer, and suggested that he stultify himself by a false recommendation for the adoption of the plan.

Q. You spoke to me about an item of $200,000 — will you state what that was? A. There was an item of $200,000 on an entirely different subject which was not referred to there.

Q. I know, but you spoke of it. I ask you to state what that was. A. The bete noire of the Commission at that time was an accumulation of established facts. It had been conceded that after an excessive payment on extras, a Commissioner suggested that the Chief Engineer make a further compromise of $200,000 in excess of his estimated value, an estimate based upon the contract already in force. It has been conceded that after the engineer had made a bland report of compliance but had failed to recommend its adoption, the Commissioner asked if there were two profits in the compromise and was told that there certainly were. It has been conceded that the Commissioner then said the Chief Engineer had put them in a hole.

Q. Who was the Commissioner? A. Edward M. Bassett.

Q. Who was the contractor? A. William Bradley, Bradley Contracting Company.

Q. Is the Bradley Contracting Company still doing work? A. I believe they are.

Q. Do you know who is the counsel for the Bradley Contracting Company? A. Mr. Lynch.

Q. Do you know any persons that have appeared as counsel for them? A. I have understood that Mr. Willcox was counsel for them on special occasions. He was not so while I was there. He was Chairman.

Q. He was in the Board while you were there? A. Yes, he was Chairman of the Commission while I was there.

Witness dismissed.

Testimony of MR. LEROY T. HARKNESS.

Q. Mr. Harkness, I call your attention to pages 251 and 252 of your address on the Dual System Contracts and their relation to the rapid transit history of New York, an address delievered before the Municipal Engineers of the City of New York, and particularly to this language:

> "As indicating the uncertainties and disappointments in these negotiations, I remember on one occasion during March, 1910, leaving the house of the Chairman of the Commission

at two o'clock in the morning, after attending an extended conference with representatives of the Interborough Company at which it appeared that the negotiations had been successfully concluded and the plan agreed upon."

Do you recall that occasion? A. Yes, sir.

Q. Do you remember the date? A. I couldn't fix it from my own memory, except that it was in March, 1910. I understand, however, it was March 22.

Q. Yes, that is your best recollection on information? A. My best information.

Q. I show you this letter dated March 22, 1910, and marked Exhibit 2 of this date, and ask you if that was present on the occasion mentioned? A. Yes, sir; I believe that to be the same paper.

Q. Who were present at that interview? A. Chairman Willcox, Mr. Coleman and myself for the Commission, Mr. Shonts and Mr. Rogers.

Q. And was that the evening when you left at two o'clock in the morning? A. Yes, sir; about that time.

Q. Now, you say that it appeared that the negotiations had been successfully concluded and the plan agreed upon. Did you refer to this letter as the plan? A. It was, including the proposition and plan.

Q. But it is substantially laid out in this letter? A. Yes, sir.

Q. And did you understand when the meeting broke up that that plan had been agreed upon? A. I remember one reservation by Chairman Willcox in regard to an allowance of 15 per cent., but outside of that it was my understanding that the general proposition reflected his views and Mr. Shonts' and was to be officially presented by the Interborough Company the next day.

Q. Did Mr. Shonts say that would be done? A. No, I don't know that anybody said it. That is the impression I had; what it came from I don't know.

Q. That an official proposition would be submitted the next day upon that basis? A. That was the understanding I had at the time.

Q. Will you state as much as you can of the words or the hap-

penings upon which you founded that understanding? A. I can't tell. I have no recollection of it beyond just that impression.

Q. When did you first hear that that understanding would not be carried out? A. I think it was the next day. My best recollection is that it was the next day that I heard the proposition would not be made.

Q. Who told you? A. I think probably Chairman Willcox, although I can't say definitely.

Q. Do you remember what he said? A. No.

Q. Did he say that Mr. Shonts had told him so? A. I couldn't recall any conversation at all.

Q. Did you hear the testimony of Mr. Ellison this morning? A. Yes, sir.

Q. Did you ever hear of that proposition until you heard it today? A. I think it is the same man. This Mr. Pollock to whom he referred saw me at least once in connection with that proposition.

Q. Where did he see you? A. At my office.

Q. Who else did he see at the Public Service Commission? A. I think he was sent to me by Mr. Farnum, Chairman Willcox's Secretary.

Q. What did you do about that? A. I talked the matter over with him, and I think I finally suggested to him that he might see Mr. McAneny.

Q. Did he see Mr. McAneny? A. I don't believe so.

Q. Why do you think he did not see him? A. Because, if it is the man I have in mind, and I think it is, the next time I heard of him he was locked up either by the Inspector of the Post Office Department or the Police for some bucket-shop operations.

Q. Why didn't you refer him to Mr. Willcox? A. Because the name that I applied to him at the time would show how much importance I attached to it. I referred to him at that time as Col. Sellus. He had this great scheme with no substance back of it. I might say here that Mr. Ellison said this morning that he told the Mayor he represented Standard Oil. He told me that he had made arrangements for financing us with Mr. Henry P. Davison.

Q. Did you see Mr. Alexander? A. I don't remember ever seeing Mr. Alexander, although it comes back to me now, as you men-

tion the name Alexander that I think some lawyer spoke to Mr. Coleman in regard to that, but it is just a very indistinct recollection I have of that, that it came from Alexander.

Q. You don't apply those terms to Mr. Alexander, do you? A. I am not applying any terms. I am simply giving my recollection of what happened.

Q. Do you know that Pollock was arrested? Do you know anything about that? A. Simply what I saw in the public press at the time.

Q. Do you know what became of the case? A. No, I never heard anything more of it and never heard anything more of him, but I know that at the time it made the impression on me that it was the same man who came to see me.

Q. You don't know whether it was or not? A. I was certain of it at that time. What facts I had in mind I don't know. I think if you look through the newspaper files in the fall of that year, you will find a reference to it.

Q. Did you know whether or not Pollock represented anybody? Did he tell you whether he did or not? A. Nothing aside from the fact that he talked to Mr. Henry P. Davison and that Mr. Davison told him he could have all the money he wanted.

Q. Did you speak to Davison? A. I did not.

Q. Why didn't you? A. I thought it was a joke.

Q. But did you know that there was a retainer, that there was a signed retainer in that business, that counsel of reputation in this city had? A. I did not.

Q. Did you ever know of persons representing corporations who were not directors and not themselves the moneyed men of the corporations? Did you ever hear of such things? A. I don't know as I quite understand your question. I have heard of people, of course, outside of directors representing companies.

Q. And not necessarily themselves rich men? A. Maybe.

Q. You have heard of such things as that. Did you take steps to find out whether there was a real proposition behind Alexander and Pollock? A. I did not, except to suggest that they go and see Mr. McAneny.

Q. Do you know William B. Ellison? A. I do.

Q. You know him as a reputable lawyer in this city? A. Yes.

Q. And not a man that is likely to deal in shadows, and certainly not if he knew it? A. Yes.

Q. Did you know that he was interested in that matter? A. I don't think I did.

Q. Did you know whether or not there were financial people in and about the City of New York that were attracted to just such a proposition as that? A. There were propositions of one sort or another made to the Commission, but nothing that I know of any substance back of it.

Q. I didn't say whether propositions had been made or not. Did you know that there were financial people in New York that were interested in just such propositions as that? A. No, I did not.

Q. You don't know whether any one else in the Public Service Commission knew anything about this proposition? A. I think that this man Pollock went to see Chairman Willcox several times and that he saw Mr. Farnum, his Secretary, and my impression is that he came to me from Farnum.

Q. Now, you say that Pollock was arrested. Do you know whether he was convicted of anything? A. No. All that I remember of it is that.

Q. If the man in Brooklyn that you complained to the District Attorney about had been arrested, would you have considered that a black mark on him. I mean, Mr. Williams, the man that tried to get an injunction against that heavy elevated structure there? Now, if you had induced the District Attorney to take stock in you and arrest him, do you think that would be a black mark against him? A. I wasn't referring to this as a black mark.

Q. You threw it out as an insinuation that he had a black mark against him because of that happening. A. If the District Attorney had taken action, it might have been.

Q. What was this bucket shop operation that you refere to? A. I don't know anything more than you will find in the newspapers of that date.

Q. Well if this was an angel coming to you, you would have turned him down? A. Oh, no.

Q. You would turn him away? A. We have a good many cranks come around.

Q. Did you have cranks make a proposition of that sort? A. Yes, sir; a man came into Judge McCall's office soon after he was appointed who said he had $50,000,000 of gold in his pockets and he had $200,000,000 more at home, and he wanted to build all the subways in sight.

Senator Thompson.— Do you think this was that kind of an offer? Is that what you are trying to make the public believe? A. I thought there was no substance back of it.

Senator Thompson.— What do you think now? A. Precisely what I thought then.

Senator Thompson.— Do you think this was an offer from two lunatics? Is that what you want the public to believe? Let us understand you today. A. It was simply that I didn't think there was any substance back of the offer.

Senator Thompson.— What do you think of it now? A. I don't think there was any substance back of it.

Senator Thompson.— Do you think that Mr. Ellison was a crank who didn't know another when he saw him? A. I didn't make such an assumption.

Senator Thompson.— Do you think Mr. Ellison thought it was a genuine thing? A. I don't doubt it.

Senator Thompson.— Do you think Mr. Ellison thinks so today? A. I don't doubt it or he wouldn't have testified the way he did this morning.

Senator Thompson.— We don't take much stock in the characterization of the Public Service Commission of people as nuts and cranks. You have characterized too many that way.

Q. (By Mr. Moss.) Now, Mr. Harkness, did you ever talk with Mr. Shonts about the change between March 22d and March 23d in the attitude of his Company? A. No, sir.

Q. Didn't ask him how it came about? A. No, sir.

Q. Did you ever learn how it came about? A. I heard afterwards that the Board of Directors or an Executive proposition had refused to make the offer.

Q. Did you learn the reason why they did so? A. No, sir.

Q. Did you ever meet Mr. Shonts at any other place that Chairman Willcox's house? A. I met him in the office a good many times.

Q. Did you ever see him with the Mayor? A. No, sir.

Q. Did you ever see him with Mr. Prendergast? A. No, except in the latter dual subway conferences where a number were present.

Q. Where were those held? A. Some in the offices of the Commission; some were held at Mr. Willcox's house; and some, I think at Mr. McAneny's house.

Q. Mr. Harkness, your salary is how much now? A. $7,500.

Q. What salary did you begin at? A. I went into the Commission I think at $2,400.

Q. When was that? A. In September of 1907.

Q. When did your salary become $4,000? A. I can't remember. My recollection is 1910, or 1911.

Q. When did it become $7,500? A. I think it was fixed at that in 1913.

Q. How long after the signing of the contracts? A. I think within a month or two after the signing of the contracts. That is my recollection.

Q. Did you ever tell the Mayor about the meeting on March 22? A. No, sir.

Q. Do you know whether anybody ever told the Mayor about that meeting on March 22d? A. Only in so far as the letter of July 7th, I think, of the Commission intimated that Chairman Willcox had advised him.

Q. That was on July 7th? A. Yes.

Q. That was advice as of July 7th, but about three weeks after March 22d, the Mayor was negotiating for dual subways, wasn't he? A. He evidently was from testimony brought out here.

Q. Well, why didn't you tell him about that meeting on March 22d when there was no question about the use of the Interborough's own money? A. Because Chairman Willcox was handling the negotiations and as far as I know, he was also talking with the Mayor. In other words, it wasn't my job as a subordinate.

Q. As one of the counsels, did you suggest to Mr. Willcox that he put that up to the Mayor? A. I did not.

Q. Why? A. I had nothing to do with it except that I was asked to come to that conference on March 22d.

Witness Dismissed.

Mr. Moss.— I asked Mr. Harkness about Mr. Whitney, who was subpoenaed to appear here this morning and who on the telephone I learned was going to Albany last night and whom I excused until 2:30 today. He tells me that Mr. Whittney is in Albany and he agress that he will carry our message to him to be here at the session tomorrow at twelve o'clock. He was asked to stay over by the Governor for a conference this afternoon.

Testimony of MR. SHONTS.

Q. Mr. Shonts, do you want to change any of your testimony? A. About what?

Q. About anything? A. I haven't had an opportunity to read any of my testimony.

Q. I don't suppose you had, but you have been thinking about it. Do you want to change it in any respect? A. I don't think of anything, as I recollect it that I want to change.

Q. No relapse of memory that you want to get into the testimony? A. Not that I think of.

Senator Thompson.— Same old memory as you had the other day? A. Same old memory.

Q. (By Mr. Moss.) Do you recall the meeting with the Mayor in his office? A. With Chairman Willcox on the 19th?

Q. Yes, do you recoll that now? A. I don't recall it very distinctly. I assume that we made the visit as Chairman Willcox testified and I have a faint recollection of our going there and having that report. The best recollection I have, of course, is the report in the minutes.

Q. That was the only thing that refreshed your recollection, wasn't it? A. Yes.

Q. Well, is that the only thing that might have refreshed your recollection? A. Well, it is the only thing that I think of now.

Q. You brought with you the memorandum that you made of your conversation with the Mayor at St. James, didn't you? A. Yes, I handed that to you, didn't I?

Q. Well, you saw the Mayor many times after that, didn't you? A. I don't remember seeing the Mayor many times. I saw his representatives many times in my office.

Q. Didn't you meet him a good many times after you had become acquainted with him in his office and at St. James? A. I don't remember. As I testified originally, I don't remember ever having met the Mayor very often. I do remember meeting Mr. Ingersol and Mr. Martin often in my office.

Q. Did you ever write to the Mayor? A. Oh, yes, I wrote to him occasionally.

Q. Did Mr. Freedman ever see him? A. I don't know about that.

Q. Don't you know whether Mr. Freedman saw him or not? A. My recollection is that Freedman told me about seeing him once only.

Q. When was that? A. It is just an indistinct recollection, but I don't remember just when it was.

Q. Weren't you and Freedman dealing with the Mayor confidentially? A. No, sir.

Q. Kind of the inside track? A. No, sir.

Q. Apart from competitors? A. What do you mean, competitors?

Q. With no competitors. A. I don't know what you mean by that.

Q. With no competitors present. A. It is my recollection I never saw the Mayor and Mr. Freedman alone in my life.

Q. Didn't you and Mr. Freedman by yourselves or in some way have dealings with the Mayor when nobody representing any other Company was present or aware of those dealings or meetings? A. Not except as I have testified in regard to my official call, this call with Willcox, and my personal call at St. James and a call that I remember having made on a business matter.

Q. Referring to the final subway contracts which were executed in March, 1913, when were those contracts substantially formulated? A. The basis on which those contracts was based was in a memorandum, I think, of February 27, 1912.

Q. February 27, 1912? A. That is my recollection.

Q. Please look at that letter and tell me what it refers to? A. That is of January 23, 1912. I suppose that is just what it says.

Q. You were giving the Mayor a private view of the contract, weren't you? A. Giving him a copy of a draft prepared by Mr. County, and as I testified before, Mr. County was Mr. Ray's assistant, and I think Mr. Ray and these other gentlemen came in, as my recollection is, in the fall of 1911, about October.

Q. And that finally became the contract? A. That finally became—as I told you in a meeting at the Down Town Association, this memorandum must have appeared which was the basis.

Q. It was prepared by Mr. County? A. No, it was not prepared by Mr. County. I have no doubt that letter was, but what I am talking about now is the basis of the contract. As I recollect it now, it was agreed upon at a conference of a lot of men down at the Down Town Association in the latter part of February, 1912.

EXHIBIT NO. 3.

Interborough Rapid Transit Co.

January 23, 1912.

"Personal.

"Dear Mr. Mayor:

"I have just reached my desk after a day's absence in Chicago and had a talk with Mr. Freedman, and in accordance with his talk with you, I am enclosing a copy of the draft of subway matters under discussion as prepared by Mr. County, Assistant to Mr. Ray. You will appreciate it is not a finished document, as it is only intended to cover

the essential principles and not the details of the proposed trade.

Very truly yours,
T. P. SHONTS,
President."

Q. Why is this marked personal? A. I usually send those communications under personal cover.

Q. Why? A. Because they were not meant for general distribution. They were unfinished documents. They were simply meant to keep the gentlemen interested advised of the progress of negotiations.

Q. Were you dealing with the Mayor as arbitrator? A. We were not.

Q. Were you using him as arbitrator? A. There was nothing in my recollection to make me think I was.

Q. Is there any reason why a powerful corporation should deal with the Mayor of the City in any other way than an official way? A. We were not dealing with him in any other than an official way, except that there was a Committee composed of members of the Board of Estimate and Apportionment with Mr. McAneny as Chairman that was the official body.

Q. That letter is addressed to William J. Gaynor as Mayor and then marked personal. Can you give any better explanation of that? A. None except that I often do that; in fact I usually did that.

Q. With the Mayor? A. With many other people.

Q. You weren't sending many such documents. A. You will find many of that kind in my file.

Q. Did you send the same document to anybody else? A. I don't remember.

Q. Now, this is in the form of a letter to William R. Willcox, dated February 27, 1912. A. How could I be sending a letter dated February 27th on January 23d?

Q. I don't know. A. I don't either.

Q. That is the way it came over from the Public Service Commission. A. I am not responsible for that.

Q. Did you send the draft that was attached to that letter to Mr.

Willcox? A. I have no distinct recollection about it. I presume I did. I was dealing with Mr. Willcox and Mr. McAneny.

Q. Then why did you mark it "personal" to the Mayor? A. I suppose I was sending him a copy of it so that he would be acquainted with the progress. Why I did it, I don't know, but I don't see how I could send a draft of a letter written on February 27 on January 23d.

Q. There are a good many mysteries and that is the way it is produced to us from the City Hall, from the Mayor's office. A. I refer to some draft from Mr. County. Is that a draft from Mr. County? If it isn't, there must be some mix-up in the file.

Q. That is possible. Mr. Shonts, attached to the back of that letter, the Chairman has discovered this one from Mr. Willcox, dated February 28th, but at the same time attached to the face of it is this letter of yours dated January 23d, 1912. Now, isn't it a fact that the paper which found its way to the Mayor officially from Willcox on February 28th had been submitted by you privately on January 23d? A. My letter says that that is something which was prepared by Mr. County, which is an entirely different proposition. What Mr. Willcox refers to is a proposition from the Interborough. Those are two separate and distinct propositions.

Q. I ask you was any copy of that sent to Mr. Willcox? A. I don't know, and it just occurs to me, since we have been sitting here talking about this that possibly I sent this over to the Mayor at the suggestion of Mr. County, because, as I recollect it, Mr. County and Mr. Ray both had been having conversations with the Mayor, as they told me. That just came to my mind.

Q. Yes, that letter to Mr. Freedman we put in evidence the other day shows that Mr. County had been to see the Mayor. That may be the reason.

Q. Isn't that connected up with the visit of Mr. County indicated by the letter of Mr. Freedman and wasn't that a personal communication to the Mayor? A. All I know is what is set forth here.

Q. But you won't find that in the minutes, in the printed reports of the Public Service Commission. You don't say that you

sent that to Mr. Willcox, do you? A. I don't say that I did or that I didn't. I have no recollection.

Q. Then why did you send a private communication to the Mayor, giving the details of what you would do at that time, the basis of the contract that eventually was made? A. I am saying possibly I did it at the suggestion of Mr. County.

Q. Why did you do it at the suggestion even of Mr. County? A. If Mr. County had been having a talk with the Mayor and suggested that I do it, I would naturally do it. I am not sure that that was the reason that I did it, but I am giving my best impression.

Q. Woudn't that one of the 27th sent to Mr. Willcox practically rest on that document of the 23d which you had sent to the Mayor privately? A. I have had no opportunity of comparing them, but I can say this, which I have a very distinct recollection of—

Q. Are you sure of that? You emphasize it, and so I ask you if you are sure of that, a very distinct recollection? A. If I hadn't been sure of it I wouldn't have emphasized it.

Q. Well, will you always emphasize it if you are sure of it? A. I will try to underscore anything for your particular edification that I am sure of. I will premise this by saying I am *not* sure of the date, to begin with, but I think the latter part of February, 1912, I was telephoned about noon and asked to go down to the Down Town Association. When I got there, I asked what was going on, and was told that the members of the Committee representing the Board of Estimate and Apportionment, the members of the Public Service Commission, certain representative citizens, such as the Hon. Seth Low and Morgan J. O'Brien and others, and Samuel Ray, Mr. County, Mr. Morgan, Mr. Davison and other gentlemen were all in a room. I think they had had luncheon and I asked to be shown into another room, which was done. The reason I say this is because from the time that we thought we had agreed in July 19, 1911, until this date I thought it was useless for me to have any further negotiations with these gentlemen, and so what negotiations we had had been done through these intermediaries. I went into this other room and these gentlemen came in; that is to say, Mr. Low, Mr. Ray, Mr. County, Mr. Morgan, Mr. Davison, Mr. O'Brien and others.

Q. You are sure Morgan and Davison were there? A. Yes, they were there. They said that they had been going over what they had been discussing with us on one side and with the officials on the other and they thought the time would come when we might formulate some general principles which might be made the basis of another proposition. I think I suggested that if that was what they wanted, I would suggest that Mr. County act as Secretary. We took up the essential features of what we felt we could afford to do, and they were formulated one by one. Mr. County would go into the room where these city officials were and thrash these matters out, some promptly and some would take time, and in that way, if I am correct on the date, and I think it was about February 27th, the general principles which were the foundation of the contract that was finally drafted and executed a little over a year later were agreed to, and after that I met city officials with the counsel, etc., from time to time.

Mr. Moss.— Exhibit No. 4 is the exhibit which was attached to Exhibit No. 3 before Mr. Shonts separated them. Exhibit No. 4 is the letter of Mr. Willcox together with the offer of the Interborough Rapid Transit Company dated February 27th, 1912, both of these exhibits being from the Mayor's office. A. Answering your question as to whether the memorandum Mr. County sent contains the essential principles that the proposition which Chairman Willcox sent to Mayor Gaynor did, I can't tell without comparing them.

Q. But, Mr. Shonts, you will not find in the printed reports of the Public Service Commission that document which is attached. A. If it didn't come from us, wasn't created by us, if I was simply a medium of transmitting it, it naturally was—

Q. The question I am asking is why was not that communicated to the Public Service Commission? A. I am telling you that it is a document which on the face of it appears to have been prepared by Mr. County and I presume that at his suggestion I forwarded it to the Mayor.

Q. Why did you forward Mr. County's suggestion and why did you forward it to the Mayor and why didn't you forward it to the Public Service Commission? A. I am answering all these on my

suppositions, as the papers appear to me—it says it is a memorandum prepared by Mr. County.

Q. Mr. County was no official of the Interborough? A. No.

Q. And Mr. County had been acting for six months for you. Do you realize that? A. Not for us, no.

Q. Exhibit No. 8, of March 20, 1916, is Mr. Freedman's letter of July 26, 1911, and starts off this way:

"Dear Mr. County:

"I had a talk with Mr. Peters after you had seen the Mayor and told me of your conversation with him."

A. That doesn't necessarily mean that Mr. County was representing us. He was never representing us.

Q. Who was he representing? A. He was just like Mr. Low and these people that were acting as intermediaries between the city officials and ourselves.

Q. And who were the intermediaries acting for? A. I suppose Mr. County was representing Mr. Ray, and I suppose Mr. Ray's chief interest was to get a subway down Seventh Avenue in front of his station.

Q. How does Mr. County draw Mr. Freedman in? A. I don't know about that.

Q. You wrote it: "I have just reached my desk after a day's absence in Chicago and had a talk with Mr. Freedman, and in accordance with his talk with you, I am enclosing a copy of the draft prepared by Mr. County." A. That is right.

Q. And none of this going to the Public Service Commission? A. It naturally wouldn't go to the Public Service Commission.

Q. Naturally wouldn't, if you were dealing with the Mayor? A. If I was transmitting to the Mayor a memorandum of Mr. County at his request.

Q. I am trying to find out the reason for it. A. If it had been a document from our Company, it would have been different; then I could answer.

Q. In this informal communication with the Mayor, marked "personal," though it is addressed to him as Mayor, you are laying the foundation for the successful contract, aren't you? A. I don't know. I can't tell without comparing them.

Q. Did Mr. County get any pay for this? A. He did not, unless he got his pay in the final eventuation of a contract that brought a subway to the doors of the Pennsylvania Company. If you mean in the sense that he got any pay from us, no.

Q. Now, I asked you the other day if you didn't advise with the office of Mr. Morgan, either Mr. Morgan or Mr. Davison or their office about practically every step you took in these transactions and you didn't say you did. A. I think my answer was — if it wasn't, I meant it to be, and I say it now — from the time that they first became identified with us as our bankers, I aimed to always keep in touch with them and keep them posted down to date, and I think that was their testimony.

Q. But you didn't tell them anything about that letter of March 22d? A. That was no definite proposition.

Q. That is the reason you didn't tell them? A. I don't say that I didn't tell them.

Q. You said so the other day. A. I beg your pardon. I said I have no recollection of telling them, and I have no recollection of telling them about that particular thing. But, I said this, and I want to say it again, we never made a formal proposition of any kind to the Public Service Commission without first having consulted our bankers, barring the one of March, 1909; but, commencing with June, 1909, we never made any proposition to the Public Service Commission without first having the O. K. of Morgan & Co. as to financing.

Q. Was the Morgan Company willing that you should make that proposition on the 22d of March to use the Interborough's money? A. I didn't make any proposition on the 22d of March.

Q. Were they willing that you should make a proposition? A. Yes.

Q. Were the Morgans willing to back you on the 22d of March for a proposition to use the Interborough's money? A. A proposition, yes.

Q. How do you know they were? A. Because the general proposition was running along there all the time. There was this feature, and I think it will clear up a lot.

Q. No, no, no. Now hold down. A. If you don't want me to clear it up, I won't.

Q. You will clear up things, when your memory comes back. I will tell you frankly, because you make your memory to serve your purpose. You remember things that you want to remember and you don't remember things that you don't want to remember. A. Don't say that.

Q. You put me to it. A. I challenge you to call attention to any conflict in my testimony on this stand, although I have never had a chance of reading it over. I admit that there are things that I didn't remember at first that I have remembered afterwards, and been very glad to testify to, but I want to prove by you, and that is the reason that you ought to not make a statement of that kind, that no corporation or no individual has ever been freer in opening up all of our records of all of our minutes, everything personal and otherwise to you than myself and my company, and I don't pretend to carry in my mind all that is in the minutes. The minutes is the best evidence, and you have had access to them and your two predecessors.

Q. Then I ask you again, Mr. Shonts, didn't members of your Executive Committee have something to say on the morning of the 23d that caused you to back out from that which you had agreed to the night before? A. I didn't agree to it the night before.

Q. Well, Mr. Harkness and Mr. Willcox?

Senator Thompson.— But you are not answering the question. There is a question there as to what your Executive Committee told you the morning of the 23rd. A. The records don't show that I took it up with the Executive Committee.

Q. (By Mr. Moss) Mr. Willcox said that you told him the next day that your directors wouldn't stand for it. A. Yes.

Q. Who were the directors and what did they say? A. We were always of one mind on it, and the thing that we were contending for.

Q. I didn't ask you that. I asked you who were the directors and what did they say? A. All the directors were there. If you will turn to those minutes, you will find it was unanimous. They said that they would not vote money and I entirely agreed with them to furnish all of the other so called normal extensions of the lines we are operating as part of the City's subway, and leave

open the Broadway-Lexington Line for the city to take all its money and put a parallel line right in the heart of ours, and that was the splitting point and it always was the splitting point.

Senator Thompson.— That you said the other day was on the 28th.

Mr. Morse.— They didn't do it on the 23d.

Senator Thompson.— On the 23d, they authorized you to go ahead and make any agreement you wanted to? A. They authorized the Executive Committee to, and what we did was to formulate the proposition of the 28th, which covered that very point.

Senator Thompson.— On the 23d you didn't formulate the proposition of the 28th? A. No, but we took it from the 23d to the 28th. The authority was given to the Executive Committee on the 23d to do what they saw fit.

Q. And, on that date you formulated the new letter which wasn't signed just like the one on the 22d? A. We went through and made the changes. All that the 23d was to put into definite shape, the pencil memorandum of the 22d. That is true. The board had this talk.

Q. The board authorized the Executive Committee to go ahead? A. But every member of that board said as long as that Broadway-Lexington Line was left open for the Public Service Commission to take all of the city's money and build right in the heart of our system a competitive system, that this would be foolish.

Q. They didn't say that on the 23d? A. That was our discussion.

Q. They didn't say that on the 23d? A. How do you know they didn't?

Q. Did they? A. I am telling you that was our discussion, as I recollect it on the 23d.

Q. Is there any record of any executive meeting after the director's meeting? A. No.

Q. Is there a record of any executive meeting after that direc-

tor's meeting in which that question came up? A. A. There was not.

Q. Why not? A. Because we discussed it at a full board meeting, and then the authority was given us along those lines, and the result was that we produced the document of March 28th, which covered that question.

Q. And not a word of that discussion in the minutes? A. I can't tell that. They gave us full authority to act, but that was the sentiment to act.

Senator Thompson.— You had full authority to make the proposition that was made the night before? A. We had authority, but none of us ever thought of doing it.

Q. (By Mr. Moss) You had put in two propositions in 1909 for your own money? A. Yes.

Q. You had discussed a tentative proposition on the 22d of March with your own money? A. Yes.

Q. And no director had made a kick up to that point about using your own money? A. No.

Q. And you tell us you hadn't done anything without conferring with your directors and then suddenly on the morning of the 23d, according to the testimony, and according to the directors there was a sudden kick by members of the board of directors. Now then, wasn't that after you had told them the point you had reached with the Public Service people the night before? A. Why certainly.

Q. Didn't they tell you there was an easier way? A. They did not.

Q. Listen to this from Mr. Willcox's letter to the Mayor.

> "As you know, these negotiations were very nearly brought to a successful conclusion, but at the last moment, the directors of the Interborough Company objected to the proposed terms. We have understood that the terms were satisfactory to the interests that the Interborough Co. expected to finance those operations, and that such interests have not changed their position."

This was July 7th. Didn't your financial backers, Morgan &

Co., remain steady up at least to July 7th, in a willingness to finance the Interborough if it would do the work? A. Anything that we would recommend, they would do.

Q. And you kept them posted? A. I kept them posted.

Senator Thompson.— If your executive committee on the 23d, after the board of directors met and authorized, they had seen fit to authorize you to send that letter as you had corrected it, your financiers would have backed you up on it? A. I imagine so.

Senator Thompson.— You have no doubt about it? A. That is my best impression.

Senator Thompson.— The Interborough Railroad Co. has been very free with its files, that is not unusually so, but it has given every courtesy to our people in your offices. I acknowledge that courtesy. A. That is the only reason, Mr. Chairman, I can carry all those files in my head.

Senator Thompson.— This is a pretty big proposition, you know, and it is the one that you were handling yourself, and it is the thing for which the board of directors formally stated that you had performed a very extraordinary and valuable service for, and you were given by way of recognition for that extraordinary and valuable service some money, and we really think that inasmuch as it was extraordinary that your recollection ought to be clearer. Willcox sits here, you know, and he remembers those transactions very plainly. A. Just as Mr. Willcox testified this morning that was his sole and only work.

Q. This was your job? A. It was, but I was doing other things besides. You get the responsibility of handling two or three million people a day with all the conditions that we had.

Senator Thompson.— I didn't know that you had that. Mr. Headley swore to that. A. Mr. Headley is my Vice-President and General Manager. I regard him as the best operating man living.

Senator Thompson.— He acknowledged that too. A. Nevertheless, some responsibility is on me.

Q. (By Mr. Moss) June, 1909, you offered to do the work with the Interborough money, your directors know it, but the Public Service turned you down. September, 1909, you make an amended offer to do the work with Interborough money, and the Public Service turned you down. Your directors know all about it. March, you offer to do the work again with Interborough money and with the full knowledge of your directors, and your backers and this time, the Public Service begin to bite. A. I didn't make an offer.

Q. Call it what you will. A. It was a memorandum.

Q. They have said what they understood about it, and you have said the same. But they begin to bite. You go back the next morning to your directors, and suddenly when you discover that the Public Service Commission are ready to take you up, the scene changes. They are not ready to take you up.

Q. They may be. You have heard what I read from their letters, and you have heard their testimony, and, just at that point, there is a change. Now, answer me this. Were you not willing on March the 22d, so far as you were concerned, to put forward substantially the proposition that you had put in that letter of March 22d? A. I never was willing to recommend our company to put private capital in the extensions of the subway, unless proper disposition was made of the Broadway-Lexington Line, by which we would either operate it or make it a part of our system.

Q. The change to the Broadway Line came many months after that? A. I am telling you why we declined this thing.

Q. I understand now you were uncertain when I asked you before whether you had talked to the Morgans about this, or not, because it was such a tentative and uncertain thing. A. I told you that while I didn't remember of talking to them, that I did keep them posted all the time, from day to day, and I suppose I did. It was my practice to do that and to send them copies of our estimates.

Q. Here is a letter produced by the Morgans from their files, by Photographic copy, please look at it and see if you recognize it? A. That is my signature. That confirms what I said the other day that I kept them posted.

Q. But you didn't say the other day.

Mr. Quackenbush.— He said that he said the other day. I am getting tired of this, Mr. Chairman. This isn't fair. You have said yourself that he said it, and I don't think your counsel ought to continue this sort of thing. I don't think you want it conducted that way.

Q. (By Mr. Moss.) Don't let's get too many butting in here.

Senator Thompson.— Just let Mr. Moss and Mr. Shonts have it out. Let's give them a half hour of it, and we will keep away from it.

Q. I am asking you, you are looking at that now. Did you send that? A. This reads very much like that memorandum of the 22d.

Q. Exactly? A. Yes, I imagine that is. I did send it as an enclosure to that.

Q. A letter on the Interborough heading :

"March 11, 1910.

"Personal and confidential.

"My dear Mr. Morgan :

"I am enclosing for your personal information, first draft of a letter setting forth results of various conferences with Chairman Willcox. I do not mean to be understood as saying that Chairman Willcox has agreed to everything contained in this communication, but I believe he does agree with the principles enumerated. Will you be good enough to read this draft and give me the benefit of any suggestion you may care to make.

"Very truly yours,

T. P. Shonts.

"Mr. J. P. Morgan, Jr.,
"Broad and Wall Sts.,
"New York.
"Inclosure."

Now the enclosure consists of a number of pages and, Mr.

Chairman, if you will just take the first page of that, I will read you the first page of this, which is dated March 10, 1910.

Senator Thompson.— It is exact down to the third.

Q. (By Mr. Moss.) Of course, the letter of March 22d has Mr. Willcox's amendments on it, and Mr. Shonts' amendments. A. This corresponds with the first draft of this letter, does it not?

Q. Yes, it seems to. Mr. Shonts, this was a well considered movement, the document that you sent to Mr. Morgan's office dated the 10th of March, the document you discussed at the house of Mr. Willcox on the 22d, and which you amended on the 23d, and amended on the 28th was serious business, wasn't it? A. Of course, it was all serious business.

Q. It wasn't beating in the air, was it? A. No.

Q. Your directors knew all about it, didn't they? A. They did at some time or other.

Q. Your Executive Committee certainly knew about it. A. They did.

Q. And they knew you were dealing with Mr. Morgan who was to finance the operations and giving him complete copies of the propositions and dealing with the Public Service Commission, didn't they? A. Yes.

Q. And at that time you were not meeting the Mayor privately, were you, up to March 28th, you had not met the Mayor privately? A. No. I only remember calling on him officially in January.

Q. You had met the Mayor through Mr. Freedman, had you?

Q. Through Mr. County? A. No.

Q. You had no dealing with the Mayor up to that time? A Not except my official call.

Q. You hadn't written any letter marked "Personal?" A. No.

Q. And you would not have sent all these letters to your financial backers, would you, unless you had believed that your directors would stand behind you? A. If we had reached a conclusion, no.

Q. In the essentials, you believed they would stand behind you? A. On any recommendations that we would make, yes.

Q. Well, didn't they raise the objections on the 10th of March, when you formulated that letter? A. Who?

Q. Didn't your directors or executive committee raise those objections on or about the 10th of March? A. No, because this proposition, if you want to call it a proposition, it is tentative, the 10th of March, which I understand to be the same as the first draft of the 22d of March, was only meant to set down in concrete shape Mr. Willcox's views as to what he wanted us to do. That has been my testimony all the time.

Q. Yes.

Senator Thompson.— Mr. Willcox didn't have to be backed up by Mr. Morgan, did he? A. No, but from the time we made our first arrangement with Morgan I have made it a rule to keep them posted on everything. I always did that.

Q. (By Mr. Moss.) Didn't one of your directors say the next morning, on the 23d, when you told him, that there was no use of spending all of that money by the Interborough? A. No.

Q. Didn't he tell you there was an easier way to get to it? A. No, he did not.

Q. Wasn't the executive committtee given power in order that it might find the easier way? A. It was not.

Q. Wasn't it after that date that you undertook the easier way of getting the Mayor to act as an arbitrator with the Public Service Commission? A. I never undertook to get the Mayor as an arbitrator. He promised it himself and he offered that according to the minutes.

Q. What did he say when he offered to be arbitrator? A. Just as we were getting up to leave, he said, "If you two fellows can't agree, I will act as arbitrator." We laughed.

Q. You didn't object, did you? A. No.

Q. You were finding an easier way? A. An easier way than what?

Q. Than putting up all your Interborough money. A. We didn't put up all the Interborough money.

Q. No, you didn't. That is what I say. Look at this letter

of November 30, 1910. This is your letter, isn't it? A. That is my signaure. I can always recognize that. That is my letter.

Mr. Moss :

"November 30, 1910.

"Interborough Stationery.

"Personal.

"My dear Mr. Davison :

"Herewith find draft of proposed letter covering revised proposition to date. I wish you would be good enough to read same and let me have your criticisms if convenient to-morrow as our mutual friend has indicated that he thinks the time is about ripe for us to send it in.

"Very truly yours,

"T. P. Shonts.

"Mr. H. P. Davison,

"% J. P. Morgan & Co."

Q. Who was the mutual friend? A. Mr. Ray I think.

Q. And who was Mr. Ray seeing? A. He was seeing everybody.

Q. Was Mr. Ray the superior of Mr. County? A. Yes.

Q. Well, you say you think it was Mr. Ray. A. I don't remember distinctly.

Q. No, you don't remember, but who was the mutual friend? Now, don't let us think about it. A. My best impression is it was Mr. Ray.

Q. Wasn't it a city official? A. I don't think so.

Q. Now get your memory on it, please. A. If you will give me a formula for getting that memory, I will be glad to carry it out. You say that every time on the stand.

Q. I don't care about impressions and you don't say anything definite about it. Who was the mutual friend who indicated that he thought the time was about ripe to send it in? A. I am giving you my best impression. That is all I can give you because I don't know. I haven't any distinct recollection of who I had in mind when I wrote it, whether that was Mr. Willcox or Mr. Ray.

Q. The letter is addressed to Mr. Willcox. A. At the same

time there was a way of timing these things. Whether it was Mr. Ray, or Mr. County or Mr. Gaynor I don't remember.

Q. It might have been Mr. Gaynor? A. Possibly.

Q. Now, if might possibly have been Mr. Gaynor, who do you think it was? A. My best impression is that it was Mr. Ray.

Q. But why did you say Mr. Gaynor? A. It might have been any of those people.

Q. Why might it have been Mr. Gaynor? A. Because he was a very prominent city official.

Q. What right would Mr. Gaynor have had to be a mutual friend to indicate to you the time that he thought it would be right for you to send it in? A. The same as Mr. Willcox.

Q. Did Mr. Willcox do a thing like that? A. He often suggested—

Q. Did Mr. Willcox ever give you a tip about the right time to send in a proposition? A. He didn't give me a tip. We discussed matters of that kind often.

Senator Thompson.— Mr. Willcox was close enough to you and Mr. Morgan to be characterized in the correspondence that passed between you as a mutual friend? A. I think so. Certainly he was my friend. I regarded him so. We had our official differences and they were very bitterly fought out.

Senator Thompson.— Did you know he was friendly to Morgan? A. I suppose he was. I have often heard him speak of him very nicely. He was a fair-minded official, a hard trader for the city and meaning to do what was right.

Q. (By Mr. Moss.) Do you think it would have been right for Mr. Gaynor to have been the mutual friend here? A. I see no reason why he shouldn't have been if we were consulting with him.

Q. Were you consulting with him? You say "if." Why did you mention him? A. Because it is possible.

Q. Were you consulting with him? A. I wasn't consulting with him. If you want me to testify again in regard to this, I don't remember ever calling on the Mayor except the time of our official call, the time that Chairman Willcox went with me, at

St. James, the time that we went on the buss matter and another time that I went in regard to transfers which I thought of since I testified before.

Q. This doesn't say that you saw him. You say, "Our mutual friend has indicated that he thinks the time is about ripe for us to send it in." Who did you get indications from? A. It would have had to be through Mr. Martin or Mr. Ingersol if it was the Mayor. I don't think it was the Mayor.

Q. Could it have been through Mr. Freedman? A. Possibly, but I don't think so. I don't remember ever having heard Freedman mention the Mayor except in that one letter.

Q. Don't you know that Mr. Freedman used to call upon the Mayor in connection with these matters? A. Never but the one time that is referred to there. He may have called oftener, but not to my knowledge.

(The letter of November 20, 1910, is marked Exhibit No. 6.)

Q. You remember the letter of the Mayor of July 9, 1910, when he transmitted your proposal of July 5 and said certain things were not tolerable? A. Yes.

Q. That printed Public Service Report contains the letter of that date, which says, among other things (dated July 6):

> "Dear Mr. Willcox:
>
> "I am sending you a copy of a letter which I have to-day received from the Interborough Rapid Transit Company. It says in the proposal that if the gross revenue should at any time be insufficient to meet the gross expenses, the deficit should be made good by the city. This does not seem tolerable. The proposal as a whole may as well be submitted to the enlightened public opinion of the City which will no doubt help us all to a correct conclusion."

Again, it says:

> "Political platforms last fall seemed to demand that all subways be constructed in that way. The Company claims that private capital cannot be got for the purpose, and it seems the doing of the work by private capital would entail

a fixed charge of about a million dollars a year more than if the City's capital be used.

"Although the proposal is sent to me, permit me to say that the credit of getting the matter up at least so that the whole matter came up for negotiation and consideration is due to the continuous effort of you and your associates since your Board was organized."

Q. Now, you answered that, didn't you? A. Yes, sir that is my signature again.

Q. This comes from the Mayor's office. Attached to it is a memorandum evidently prepared for the Mayor, written on the City Hall paper. (Marked Exhibit No. 7.)

"July 14, 1910.

"Dear Sir:

"Referring to my letter of July 5th, relative to our views as to the construction of the extensions of the present subway system and my suggestion as to the terms on which our proposal would be based, I note from your published letter to the Public Service Commission that you do not consider the making good by the city of the deficit between the gross receipts and the gross expenditures as tolerable. Our estimates show that this deficit would be in interest and sinking fund only and would occur the first three years of operation, decreasing in amount each year, and would be substantially refunded by the profits accruing to the city during the next two years in which all of the net earnings go to the city.

"In order, however, to meet your objection, we are prepared to modify this in submitting our final proposal to the Public Service Commission, so that the making good of any temporary deficit by the City would be limited to the payment of any interest other than bonds not met by the net earnings of the road, and all interest so paid together with the sinking funds of 1% per annum from the commencement of operation of the extension is to be a preferred and cumulative charge against the net earnings of the road to be paid in full before any division of the profits is made.

"Regarding our suggestion that the present subway be

extended northerly through Lexington Avenue instead of through Madison Avenue as once proposed, the following are some of the reasons for using the Lexington Avenue."

(Then you state the reasons for occupying Lexington Avenue instead. You give five reasons and conclude this way):

"The foregoing are our views concerning what is the best plan. However, we beg to assure you of our willingness to give careful consideration to any alternative plan which the City may, after due deliberation, see fit to propose either as to the substitution of Madison Avenue or any other matter involved which may be along the general lines of our suggestions."

Do you remember that? A. Yes.

Q. Then that letter of the Mayor didn't provoke a breach between you, did it? A. No.

Q. You ended with this correspondence in just as good a state as you were before? A. That left us where we started, where Chairman Willcox and I started, with this exception—

Q. And left you willing to substitute Madison Avenue on July 14, 1910? A. To give consideration to the question.

Q. "However, we beg to assure you of our willingness to give careful consideration to any alternative plan, even to the substitution of Madison Avenue." A. I never played poker, but—

Q. Don't let us get poker in here. We are not talking about poker.

Mr. Quackenbush.—I know they don't play poker in the church that you and I attend, Mr. Moss, but I think Mr. Shonts wants to qualify a statement he just made. A. You asked me where it left us, and I was going to say that the lettters of March 22, 23 and 28 left us with the conviction on my part that Chairman Willcox was wedded to the Broadway-Lexington Avenue line. This letter left us with the conviction that the City would not take its money for normal extensions of our line. Therefore, the two things left us exactly where we started, except with those two pieces of information which had been developed, and therefore we were ready to start in again, as we did start again, and eventuated in the proposition of December 5th.

Q. Did you tell Mr. Morgan or Mr. Davison that you were having these interviews with the Mayor? A. I suppose so. I don't know.

Q. Now, don't suppose. A. I don't know. I aimed to keep them posted all the time.

Q. Did you tell them you went down to St. James? A. I answered that the other day and said if it occurred to me, I did tell them.

Q. That wasn't testifying to anything. A. I don't remember.

Q. Did you tell Mr. Willcox you went down to St. James? A. I think I did.

Q. Told him all about it? A. I think I did.

Senator Thompson.— That was important enough so you made a memorandum about it. A. The memorandum is in evidence, but as to who I told about it, I don't remember. I think I told Chairman Willcox about it.

Senator Thompson.— Wouldn't you naturally tell your bankers? A. I think I did. That is my best impression.

Q. I offer this letter of Mr. Morgan to Mr. Shonts, and of Mr. Pepperman to Mr. Morgan :

"July 26, 1911.

"My dear Mr. Shonts :

"I enclose a cutting from the Evening Post of the night before last and one from yesterday's Sun in which I admit there is nothing, but I feel so sure that it would be wiser for your Company not to appear to be subway-hunting for a little while that I simply send these cuttings to you to show the sort of thing that is appearing. Your decision in the matter will be quite satisfactory.

"Yours very sincerely,

"J. P. Morgan, Jr.

This is Mr. Pepperman's letter to Mr. Morgan :

"July 26, 1911.

"I have your letter of even date enclosing cuttings from Monday's Evening Post and yesterday's Sun respectively.

Mr. Shonts' parting instructions to be unequivocally followed were exactly as set forth in your letter.

"I therefore talked with the writer of the Evening Post story who is personally known to me who states to me that he got his cue from the Mayor's statement a few days ago to the effect that it is possible the Interborough might operate all the subways in Manhattan and the Bronx. He said that the balance of his story was based on his own familiarity with the situation gained as the subway writer for the Post during the subway controversy and that he faked his authority for the statements feeling them to be facts.

"The main object of this letter, however, is to convey to you the information that Mr. Shonts' instructions to us are as above set forth and we shall use our best efforts to see that those instructions are carried out."

Q. Did you know about this letter? A. No.

Q. It says at the bottom that you are on a vacation. Now, you notice there the statement emanating from the Mayor's office to the effect that it is possible that the Interborough might operate all the subways in Manhattan and the Bronx. Did you have any such conversation with the Mayor? A. I don't remember of ever having a conversation with the Mayor, beyond one thing, that he wanted us to furnish private money for our formal extensions and if the city built additions such as the Broadway-Lafayette loop, etc., it should be done with private capital. That would naturally have made us the operating company for Manhattan and the Bronx. That would be a conclusion.

(The letters of July 26th are marked Exhibit No. 8.)

Q. Do you remember a man named William F. Clark? A. I don't now, no.

Q. Did you have a man named William F. Clark do any publicity work? A. I can't place him just now.

Q. Do you remember a William F. Clark you referred to the Mayor? A. I don't remember it at all.

Q. Well, I have several letters here produced from the Mayor's files, relating to Mr. Clark, and when they refer to you, as they do, I shall ask a question about them.

Exhibit No. 9 :

"March 4, 1912.

"My dear Mr. Mayor :

"No one holding a city position should be mixed up in national politics. They are bound to do something to hurt your presidential prospects.

"The Girard incident illustrates this lack of tact, to use no harder term. This is a big game and it can't be successfully played by small men. You should instruct Adamson, Watson and the other gentlemen who have been collecting funds to quit. Hearst has a report of every move they have made. They mean well, no doubt, but they are only making it more difficult for your real friends to do the work in the South and West that would be necessary to give you the proper standing in the National Convention.

"Sincerely yours,
"W. F. Clark."

It is stamped, "Answered March 5, 1912." Here is the answer :

"March 5, 1912.

"Dear Mr. Clark :

"I think you are entirely mistaken in saying that Mr. Adamson, Mr. Watson or anyone around me is collecting money. I cannot credit it. As to the Girard incident, I trust that you do not believe that I sit down to lunch with him and ask him for money. I never sat down with him in my life nor have I any intimacy with him whatever. I fear you were rather credulous in this instance. If necessary, I shall issue a statement that no one is authorized to collect any money in my behalf.

"Very truly yours,
"W. J. Gaynor, Mayor."

Then comes a letter of May 14, 1912, on the engraved letterhead of W. F. Clark :

"My dear Mr. Mayor :

"A brisk newspaper campaign would, I am sure, hasten along the subway negotiations. I did this work before, and

I am sure if you would say the word to Mr. Shonts for me another campaign would be inaugurated. The only way to get the New York public to understand anything is to keep hammering away in the newspapers on the right lines. Your newspaper friends would be benefited by my handling this work and I know that it would be very pleasing to your friend, C. F. M.

"Sincerely yours,
"W. F. Clark."

It is stamped answered May 15, 1912. The answer is :

"May 15, 1912.

"Dear Mr. Clark :

"I should think the Interborough would be glad to have you exploit the subway business. Of course, I have no funds for the purpose, but I think the whole thing now is about settled.

"Sincerely yours,
"W. J. Gaynor,
"Mayor.

"W. F. Clark, Esq.,
"1 Broadway,
"New York."

And, on engraved paper :

"W. F. Clark,
"New York,
"1 Broadway.

"May 20, 1912.

"My dear Mr. Mayor :

"I have suggested to Mr. Shonts that if he wanted to know anything about my newspaper or political ability he might inquire personally of you. This is the time for a quick, decisive newspaper campaign, not of the patent medicine plate variety, but one putting you in touch with every political writer of the country. This is what I can do through my bureau.

"Sincerely,
"W. F. Clark."
"June 3, 1912.

(Same paper.)

"My dear Mr. Mayor :

"Run your eye over the enclosed. There is nothing in it that every intelligent observer of New York's late politics does not know, but I am afraid that dreams of success sometimes puff up politicians, and it is just as well for those who do not claim to be politicians, but who are observers of politics, to keep their feet on the ground.

"Now, if you are nominated for President, we want the independent vote. If you are nominated as Governor, running, as you will, on a separate ballot this year, we want the independent vote. The way to get this vote is to organize now and go after it. I spoke to some of your friends, men whom you have saved from financial annihilation, but they seem to me to be more concerned in the success of T. R. (Root, Ryan, Morgan) than anything else. If they are going to give you the old saw dust game, at least let them know you are aware of their intention.

"Sincerely yours,
"W. F. Clark."

(Same paper.)

"June 3, 1912.
"2:30 P. M.

"My dear Mr. Mayor :

"Since writing you this morning, I have seen Mr. Freedman. He is the only Democrat in the outfit and he is a sincere friend of yours. He is going to take the matter up, and I hope he will be able to make those Roosevelt Republicans understand they are in New York and not West of the Mississippi now. What we want is quick action. I want to keep out-of-town papers from now until July 25th alive with Gaynor stories.

"Yours sincerely,
"W. F. Clark."

"September 26, 1912.

"My dear Mr. Mayor :

"With that army of Southern gentlemen that surround

you, nothing of this kind should ever happen. Your letter on the police situation was up to your best effort. I suppose that you have noticed that the Morning Telegraph is the only paper that is standing by the administration.

"Where are the newspaper friends of yesterday, the ones you have been feeding on city advertising? Don't let anyone hand you any bull on the governorship. You haven't a chance and only belated effort would revive the painful Baltimore memory when your alleged friends dragged a great name in the dust.

"Sincerely yours,
"W. F. Clark."

There are two letters from the Mayor's office that do not come in order of date, but because of reference to the subject, I read them, in evidence :

"February 25, 1910.

"Dear Mr. Clarke :

"I wish you would give me a list of those men in the Corporation Counsel's office. I read the Telegraph of yesterday and shall try to do so as often as possible.

"Very truly yours,
"W. J. Gaynor."

"August 9, 1911.

"Mr. Andrew Freedman,
"New York City.

"Dear Mr. Freedman : I am very glad to receive your kind letter. It was very thoughtful of you to write it to me.

"Yours sincerely,
"W. J. Gaynor, Mayor."

Q. Do you remember the visit of Mr. Clark? A. No.

Q. This correspondence has not brought the matter to your attention at all? A. No, there were many people who came to me to save the situation in the same way.

Q. Don't you remember his coming to you from the Mayor? A. No.

Q. Did Mr. Freedman ever speak to you about the Mayor's po-

litical aspirations? A. No, he talked about the Mayor's future. I think they talked about his running for the presidency.

Q. What did you say about it? A. Just as you discuss any person in the public eye.

Q. Was any contribution made? A. Not that I know of.

Q. Did you contribute? A. I did not.

Q. Did Mr. Freedman? A. I don't know.

Q. Do you know whether any of the directors of the Interborough Railroad contributed? A. I don't.

Q. Have you any information? A. I never heard of anyone.

Q. I have a letter signed by you and addressed to Mr. Morgan, which would indicate that you did report to Mr. Morgan your conference with the Mayor at St. James. A. Yes, I imagined I did.

Q. I will read this letter in evidence :

"April 25, 1910.

"My dear Mr. Morgan :

"In accordance with promise made to you, I herewith enclose certain statistical data showing estimated cost and estimated return on certain subway routes, same being the basis of conclusions expressed by me to Mayor Gaynor in personal conversation Sunday, April 24th, with respect to possible extensions of the existing city subway operated by this Company, all of which is self-explanatory.

"Very truly yours,

"T. P. Shonts, President."

(Exhibit No. 10.)

And then follows communications and plans over the signatures of Mr. Hedley, Mr. Parsons, Mr. Daly, and a lot of figures from the auditor's office. Did you have all those figures down with you at St. James? A. No. I may have had them with me, but I talked right out of my head. I had the substance of them.

Senator Thompson.— Weren't you afraid you would forget them? A.

Mr. Moss.— I will put two of Mr. Morgan's letters in evidence. Here is a letter of Mr. Shonts to J. P. Morgan & Co., dated July 1, 1912 :

"Gentlemen:

"Referring to your letter of April 9, 1912, it which it is stated that the entire transaction therein outlined depends upon the legality and constitutionality of the contract between the City and our Company being confirmed by the courts and that no action under the agreement of April, 1912, is to be taken on either side until all parties are satisfied as to the legal enforcibility of such a contract and of the bonds mentioned in your letter, I beg to advise you that the Court of Appeals on June 29, 1912, affirmed the judgment of the Supreme Court in which the legality and constitutionality of the proposed contract between the Interborough Rapid Transit Company and the City were confirmed.

"We shall proceed to bring about the formal execution of the contract with the City and the approval of the bonds by the Public Service Commission at the earliest possible date in relation to which I referred to you in my letter of June 5, 1912.

"T. P. Shonts."

This signature is not Mr. Shonts' handwriting. That was signed by authority? A. Yes.

Q. Then there is a reply to that letter from the office of Mr. Morgan, under date of July 3, 1912.

"T. P. Shonts, Esq., Pres.,

"Interborough Rapid Transit Co.

"165 Broadway, City.

"Dear Sir: We have received your letter of the 1st inst., advising us of the confirmation by the Court of Appeals of the legality and constitutionality of the proposed contract between the City of New York and the Interborough Rapid Transit Company, which we note.

"Yours very truly,

"J. P. Morgan & Co."

(Letters of July 1st and 3d are Exhibit No. 11.)

Q. Mr. Shonts, when did you last see Mr. Prendergast? A. Do you mean right down to date?

Q. Yes. A. What day is this, Friday?

Q. This is Friday. A. Last time we met here that I testified.

Senator Thompson.— That was last Monday. A. Yes, it was last Monday.

Q. (By Mr. Moss.) Downstairs at his office? A. Yes.

Q. You haven't seen him since? A. No.

Q. Where do you live, Mr. Shonts? A. My home is at 490 West End Avenue.

Q. You are living there? A. Yes.

Q. Did you go to Mr. Prendergast's office today? A. Mr. Nicoll and I walked by there to leave our coats again today, but we didn't see him. We were ahead of time.

Senator Thompson.— Are the coats safer down there than they are here? A. Not necessarily, but when we have to wait, we may as well be down there.

Senator Thompson. — They tell me that he has a good place down there. A. A very nice office.

(Witness dismissed.)

Mr. Moss.— Mr. Siegerson, from the Board of Estimate, produces the resolution from the minutes of the Board of Estimate, under which the subway contracts were sent to the Corporation Counsel's office under date of March 6, 1913. After various recitals, it says:

> "Now, therefore, be it resolved that the communication and the proposed certificates, contracts and supplementary agreements be received and referred to the corporation counsel for his examination and to the Committee on Pending Transit Proposals for report."

Senator Thompson.— I am going to submit the evidence taken by this Committee up to March 1st with a report to the legislature Monday night and the evidence when printed will be available.

Adjournment.

MARCH 25, 1916.

Testimony of WILLIAM B. ELLISON, questions by Mr. Frank B. Moss.

Q. Have you been able, by referring to your office register, to give us any dates and circumstances in connection with the call that you made to Mayor Gaynor's office? A. I have, yes.

Q. Please state what you can. A. Your first subpoena was served so shortly before I appeared that I hadn't a chance to look up my books at all. I have done so since, and find that on the fourth day of August, 1911, I had an interview with Dr. W. J. Pollock, who gave his office address as 150 Broadway. He was brought in by a friend of mine whose name I don't think it is at all necessary to mention.

Q. You will communicate that name to the Chairman, if he desires it? A. Yes.

Q. A man of substance, a man of position? A. A man who had held several reasonably important positions in the city government.

On the 9th of August, I went over and called on Mayor Gaynor. I went alone and I presented the proposition to him as it had been presented to me. At that interview, I asked him to make an appointment when I could bring these people over to meet the Mayor. On the 10th, I had another interview with Dr. Pollock and informed him of the interview that I had had with the Mayor. On the 14th, I had an interview with Dr. Pollock and Mr. Alexander, and we again reviewed the proposition that had in the first instance been made by Dr. Pollock. On the 15th of August, I took the Doctor and Mr. Alexander to the Mayor's office and then had the interview to which I testified yesterday.

At the interview with the Mayor and in the interviews with me, the question of the percentage was quite fully discussed and several contractors in New York were mentioned who had been carrying on large businesses on this basis of a percentage of the cost of building or construction.

A particular portion of the suggestion, or the proposition rested upon concreting, these men saying that their client had facilities for concreting so cheaply that there would be an enormous saving,

that the city would save even when it paid the ten or twelve per cent. That is, the total cost of construction, including their commission, would be less than the city could build the subways for with their own money.

All of the work was to be conducted under the supervision of the city's engineers. Those facts were presented to the Mayor and more or less fully discussed, and there I left him.

Q. Was this work to be paid for as it was done? A. It was to be paid for as it was done, and these parties, or, those whom they represented, were to be given a lien or liens upon the work for the amount of their expenses, the amount of their construction account.

Q. And was it intended to cover a complete system of subway transit? A. A complete system of subway transit up to $500,000,000. There was also some reference to the water front improvements, and statements were made to me, and appealed to me, that if they could get such a contract, it was one they would have absolutely no difficulty in financing.

I believe now that if the city would let out contracts for improvements and agree to pay ten per cent. or twelve per cent. of the actual cost of them, that you could capitalize such a contract at a billion of dollars in no time.

Q. You say that from your knowledge of conditions in the city? A. From my opinion of conditions in this city.

Q. But, your opinion is based upon some knowledge is it not? A. Thirty years or more.

Q. Did you look upon this as a real proposition? A. Absolutely.

Q. You looked into that before you went to the Mayor, didn't you, satisfied yourself? A. I wouldn't say that. I had confidence in the proposition as they presented it to me. It looked to me to be a very excellent thing both ways. It meant that this work could be done without direct exhaustion of the city's funds. It meant, at the same time, a very flattering contract for those who could secure it, if they could secure it.

Q. And you believe such an arrangement could have been made, even with other persons than those that you interviewed and introduced? A. Without any question. Now, I want to add also that I hadn't a particle of personal interest in it, not a particle.

There was no question of compensation. There was no suggestion or thought of anything of the kind. I had known Mayor Gaynor for many years and I was interested in the subway proposition as it stood and in subway building, and I was sufficiently interested and impressed with what was laid before me to think it was my duty — at any rate, it was a pleasure, to take those men over and introduce them to the Mayor, and then he, through the proper functions of government would investigate whether there was anything in it or not.

Q. At or about that time, was the substance of this proposition published in one of the papers? A. More than one of the papers. The Journal of Commerce published it at length, and I think there was reference to it in more than one publication. My recollection is that the New York Times published it. I don't recall the other newspapers.

Q. Mr. Harkness yesterday said that Pollock had called on him on one occasion, and he made some sneering references to Pollock as a man of no substance and a bucketshopper. Do you know anything about it? A. I never heard anything of the kind. Certainly if I had, I don't think I would have been representing him in the manner that I did. He came to me with the recommendation of a friend whose recommendation I would give confidence, and he presented a proposition that looked to me to be an excellent one from both sides.

Senator Thompson.— I draw this question from experience in will contests, having been called to my mind from the testimony of Mr. Harkness yesterday — did these men and their conversations at the time impress you as rational or irrational? A. Quite rational, as evidenced by my subsequent actions.

Q. And your idea of rationality is based upon the fact, if I understood your testimony correctly, that you believed there were other large financial interests than those that were mentioned that would have gotten behind such a proposition as that? A. Immediately, and this is based upon further information that was given to me as to the connection of both Dr. Pollock and Mr. Alexander with the Standard Oil interests and those that were akin to it,

Q. You had information? A. I had information given to me by the gentleman who brought them to me.

Q. Can you tell us Alexander's first name? A. I do not recall. He was introduced to me as the son of a former President of either the Standard Oil or some affiliated company.

Q. Well, this wouldn't have involved any question of partnership with the city, would it? A. Not under my view of the law.

Q. Your relations with Mayor Gaynor were entirely friendly, were they not? A. For years.

Q. You went to him as a friend? A. Absolutely, and without one particle of interest, even contingent, so far as I was concerned.

Q. Did you know any of these Interborough directors? A. Yes.

Q. Who did you know? A. Well, could you give me the list of them at the time?

Q. I can mention some of them. Did you know Mr. Vanderbilt? A. No, I knew his father.

Q. Did you know Mr. Sullivan? A. No.

Q. Did you know Mr. Berwind? A. I had met him.

Q. Did you know Mr. Freedman? A. I had met him, also.

Q. Did you know Mr. Hawley? A. Quite well.

Q. Did you know any one of the directors as well as you knew Hawley? A. No.

Q. Did you ever talk with Hawley about subway matters? A. Many times. Mr. Hawley was a friend of mine of many years. My offices, at the time, as they now are, were at 165 Broadway. Mr. Hawley, on his way to attend meetings, ofttimes stopped in, and more frequently on his way from meetings. I was not infrequently at Mr. Hawley's office down at 25 Broad Street. In fact, I knew him very well.

Q. Did Mr. Hawley ever put any matter before you in a way that you would remember it? A. Not particularly. There were frequent discussions of pending conditions involving the Interborough.

Q. Did he ever talk with you about the attitude of members of the city government, members of the Board of Estimate and Apportionment towards the Interborough interests? A. Yes.

Q. What did he say to you? A. I decline to tell many things that he said to me because I don't think I should. There was a general discussion.

Q. Did he ever ask you to do anything? A. Never.

Q. I don't want to ask you to say what you don't want to say, that is, I don't want to force you. I am not in the position of forcing you, exactly, and yet, if you have no professional confidences that inhibit answers, I would like to see a little, if I may, about what your conversations were with Mr. Hawley. Did he ever ask you to speak to any one on the Board of Estimate? A. Never.

Q. Did he ever tell you what the attitude of the members of the Board of Estimate was? A. We discussed that phase of it several times.

Q. Did he ever mention the names of any of the members of the Board of Estimate in talking it over? A. Most of them.

Q. Did he ever tell you at any time whether the members of the Board of Estimate and Apportionment were friendly to his proposition, or the proposition of the Interborough? A. I told him they were not.

Q. Did you mention any persons in telling him they were not? A. I mentioned the name of the present Mayor.

Q. That is, Mr. Mitchel? A. Yes.

Q. You told him that Mitchel was not friendly to that proposition? A. As it existed at the time.

Q. About when was that? A. It was when the form of the contracts was being discussed, and I was very much interested in Mr. Mitchel.

Q. Did you tell him that any one else was unfriendly to their proposition? A. I don't recall specifically. I think we referred to the attitude then given publicity by the other members, Mr. McAneny, Mr. Prendergast and Mr. Mitchel.

Q. Did he express any opinion about the attitude of the members of the Board, when you said that Mr. Mitchel was against him? A. He didn't think it was very serious. That was as he expressed it.

Q. He didn't think that Mr. Mitchel's opposition was serious? A. He thought Mitchel's opposition was very serious.

Q. But what about the other members? A. He didn't express any concern about it.

Q. He wasn't concerned about the attitude of the other members? A. He didn't express any concern about it. The question of John Mitchel's attitude was the subject of more than one discussion, and I told him that there was one man on that Board at any rate whose approval of those contracts he would never get until he had been convinced that the city's interests demanded it, and that was John Mitchel.

Q. Did he say anything about the other members? A. Well, I think he laughed a little at my apparent earnestness and said he wouldn't be needed.

Q. Did he say in words or substance that he had the others? A. No, I wouldn't say that.

Q. But simply that Mitchel would not be needed? A. That Mitchel's vote wouldn't be final or controlling.

Senator Thompson.— When was that? A. When the contracts were under discussion and before they were finally approved.

Senator Thompson.— That was in 1911 or 1912? A. Mr. Mitchel was then President of the Board of Aldermen.

Mr. Moss.— It must have been in 1912.

Q. (By Mr. Moss.) At that time was Mr. Prendergast speaking against the contracts? A. I didn't hear him. I never heard him.

Q. But, did you know by reading the newspapers that he was? A. I don't recall that. My recollection is that the storm center seemed to be John Mitchel.

Q. But, I am trying to fix the date. Wasn't there at that time a public idea gained from Prendergast's attitude that he was against the contracts? A. I think I will leave you to the newspapers on that point.

Q. Can you, then, give us a closer idea of the time so that we may refer to the newspapers? A. No. I cannot, Mr. Moss.

Q. Had the final contracts been substantially formulated so that they were being discussed as proposed measures? A. My memory is not sufficiently clear to warrant me in answering that question directly.

Senator Thompson.— These contracts were disapproved by the Board of Estimate in July, 1911, at a meeting, where they only

got six votes, the Comptroller and the Mayor voting against them. Do you remember that? A. Not definitely. I remember there was opposition, and my recollection is that there was opposition at the instance of the three leading members of the Board of Estimate, Mr. Prendergast, Mr. McAneny and Mr. Mitchel.

Senator Thompson.— Didn't you know that this matter came up for a vote in the Board of Estimate in July, 1911? They were approved in May, 1912. A. That I do not recall, Senator.

Senator Thompson.— What I was trying to get at was whether this conversation was between July, 1911, and May, 1912, when they were finally approved? A. I couldn't say.

Senator Thompson.— Could you give an idea of how long before they were finally approved? A. It was some time before they were finally approved. That I know, because the whole situation was acute.

Q. (By Mr. Moss.) How long before Mr. Hawley's death was it? A. I couldn't tell you.

Q. He died in February, 1912. A. Well, it was sometime before his death, because he was then in good health.

Q. Would you consider it weeks or months? A. I would say without hesitation months.

Q. How long was it after your interviews with Dr. Pollock and Mr. Alexander? A. I couldn't connect the two in any way.

Q. Was it after your talk with Alexander and Pollock, do you remember that? A. I couldn't say. I can't associate the two propositions. The whole subject was one that naturally I had an interest in. I had been corporation counsel and, like every other citizen, took an interest in the question of subways, which was the one acute question that was before the public at the time.

Senator Thompson.— I would like to have you, Mr. Ellison, tell me just exactly as near as you can remember the substance of what he said about the members of the Board of Estimate. A. I think I have stated it as specifically as I can. I wasn't interested particularly in anybody other than Mr. Mitchel. I had a great deal of interest in him, and he was making a battle against

what he though were bad contracts, and I am free to say that my sympathies were in no inconsiderable degree with him, and, interested as I was in his personal future or fortunes, when the question was opened to discussion, I stood with all the vigor that I was capable of in support of the position he occupied.

Senator Thompson.— And you told him that he never would, in your judgment, get John Mitchel to be for the contracts? A. Not until those contracts were put in such form that they would appeal to John Mitchel's judgment as being fair to the interests of the city.

Senator Thompson.— In answer to that, what is your present recollection of the substance of what Mr. Hawley said? A. As I testified before, he said, "We won't need him."

Senator Thompson.— He said, "We won't need him." Did he say he had the other members? A. No.

Senator Thompson.— Did he mention any of the other members by name? A. Not as I recall it. The discussion in that respect was general.

Senator Thompson.— Of course, you knew at that time that it took twelve votes out of the sixteen to put that over? A. Yes.

Senator Thompson.— And Mitchel had three? A. Yes.

Senator Thompson.— And Mr. Hawley also knew that? A. Very well.

Senator Thompson.— So that he would have had to have in mind, in making that statement, that he wouldn't need him, that he would need the vote of the Mayor and the Comptroller, the only other two that had three votes? A. I think Mr. Hawley, in a good natured way, may have resented the confidence that I expressed in the necessity of convincing John Mitchel that the contracts were right. I think it was rather a retort of the attitude that I took.

Q. (By Mr. Moss.) Did he ever tell you how they had gained the consent of any of the members of the Board of Estimate? A. No.

Mr. MacReynolds is sworn.

Testimony of MR. SCOTT MACREYNOLDS:

Q. Mr. MacReynolds, what is your business? A. Lawyer.

Q. Where is your office? A. 141 Broadway, City of New York.

Q. Mr. MacReynolds, I have been informed of some conversation between you and another person, and I want to interrogate you about that conversation. Do you know Travis H. Whitney? A. Yes.

Q. How long have you known him? A. I should say eight or ten years.

Q. Do you meet him sometimes and talk with him? A. Occasionally.

Q. Did you meet him on the street or boat at times, and if you did, would you speak to him? A. He lives down Flatbush way, as I do, and I have met him in the last few years coming in on the elevated occasionally.

Q. Have you ever spoken with him on subway matters? A. I may have. I presume so.

Q. Have you ever spoken with him about the rumors of the way in which subway matters had been put through? A. I think I have.

Q. Did you ever speak with him regarding public rumors of bribery in connection with the putting through of subway matters? A. I think I told him one time of a rumor that I had heard, some gossip.

Q. When was that? A. I should say roughly six or eight months ago.

Q. Where was it? A. On the Brighton Elevated train.

Q. What did you say to him? A. Well, now, Mr. Moss, what I said to him was gossip, and I didn't know and I don't know now whether it is true or not. I don't believe that it is fair for me to bring in the names of people whose reputation or character might be injured on account of a mere conversation or gossip that I might have had with somebody else.

Q. Did he reply to you? A. Yes.

Q. What did he say? A. Well, he said he had heard the same thing.

Q. Then, I think you had better give us the conversation, what you said and what he said, with the understanding, as you told us, that what you said was gossip. We have to have that information to understand his reply. I think you had better tell us the whole thing. A. I think the conversation was opened by my stating that I had understood that since the name of Charles E. Hyde had become obscured, or his reputation had been affected, by some of the disclosures about him, a new man had become collector for Mayor Gaynor in the latter part of his life. I think I mentioned that name, but I don't think that was in connection with subway matters.

I think I also asked him if he heard the story about a solicitation of a bribe on behalf of the Mayor, Mayor Gaynor, and he told me he had. I told him that I had heard that Mr. Hyde had gone to President Williams, of the B. R. T., and had stated that for $50,000 Mayor Gaynor's vote could be had in favor of the dual subway contract, and that I had been informed that President Williams had spurned the offer and refused to have anything to do with it. Mr. Whitney told me that that was correct, as he had had a conversation with Mr. Williams and Mr. Williams had told him the same thing.

Q. Does that give substantially the whole of the conversation between you and Mr. Whitney? A. Well, I don't know that it was the whole of the conversation. I think a part of the conversation was devoted to the gossip regarding the collection of corruption funds in connection with the gambling situation, etc., that didn't have anything to do with subway matters.

Q. Of course, we aren't going into the gambling situation here, and I won't ask you to go into this unless it is tied so closely with this subway situation as to illuminate it. A. I don't think it is.

Q. Were there any other names mentioned in your conversation in reference to collecting in subway matters? A. I don't think so.

Q. Was the name of any successor to Mr. Hyde in the sense that you speak of mentioned? A. Not in connection with subway matters, no.

Q. In connection with other matters? A. Yes, in other matters.

Q. I will ask you to give that privately to the Chairman, if you will.

Mr. MacReynolds writes)

Q. Was that name mentioned by you or Mr. Whitney? A. By me.

Q. Did Mr. Whitney speak of that person in any way? A. I don't recall that he did.

Senator Thompson.— When you speak of Charles Hyde, which Hyde do you mean? A. The former City Chamberlain.

MR. TRAVIS H. WHITNEY, being duly sworn, testified as follows:

Q. Mr. Whitney, you heard the testimony of the previous witness, did you? A. Yes.

Q. Will you tell us about the conversation that you had with him? A. Mr. Moss, I have known Mr. MacReynolds for a number of years as a reporter of the New York American.

Q. I asked for the conversation. A. I have had a number of conversations with him at various times. I don't carry a special recolleltion of this conversation. I think he said it was some six or eight months ago. I am quite sure that I haven't talked with Mr. MacReynolds in a much longer time than that. The various times I have talked with him, as I have run into him, he has discussed matters that he has been investigating for the purposes of newspaper stories.

I think it is entirely possible that we did have the conversation along more or less the lines that he speaks of.

Q. When did Colonel Williams tell you that? A. I can't recall any specific conversation with Colonel Williams in which he did make that statement. I don't believe that I have discussed with Colonel Williams any matters connected with the contracts or

proposed contracts since a way back at the time the contracts were going through, and when he was in the office of the Commission a great many times.

Q. When did he tell you of a request by Mr. Hyde for money? A. I couldn't fix the time.

Q. About when was it? A. As I say, about the time that the contracts were under discussion, or after they went through.

Q. What did he say to you? A. I can't remember.

Q. Give us the substance of it. A. I can't remember the particular conversation and therefore I can't remember the language.

Q. You don't remember the specific conversation, but you remember that there was a conversation to that effect in substance? A. I know back at that time that there was very considerable feeling with respect to the efforts of the two companies to secure the contracts, that they carried on an advertising campaign against each other.

Q. That was the time when you had the conversation? A. I think it may have been as far back as that. I can't say whether it was before or after the contracts were signed. In all probability it was simply something that I said to him at the time when he was in the offices of the Commission waiting for one of the conferences or in one of the conferences.

Q. I would like to have you state what the substance of that conversation was? A. I can't give you any language.

Q. Was the substance substantially as Mr. MacReynolds has stated? A. Yes, sir; it may have been, although I can't say that Mr. Hyde's name was specifically used.

Senator Thompson.— Did he identify Mr. Hyde in some other way? A. I can't remember.

Q. (By Mr. Moss.) You knew who he meant? A. No, not necessarily.

Q. I don't mean necessarily, but you knew who he meant, didn't you? A. I am trying to think about it, Mr. Moss. Of course, the Mayor was represented by a number of his subordinates in matters connected with subways.

Q. Do you think it might have been possibly some other repre-

sentative of the Mayor? A. I couldn't say. About that time Mr. Hyde was very prominent.

Q. It was somebody? A. It is my impression, yes, sir.

Q. Haven't you a memory that somebody was mentioned? A. I really can't express it under oath, because this is a matter that I hadn't given any thought to until I heard a discussion of it.

Q. Wouldn't you give a matter of that sort thought? A. At the time, yes, but I have no doubt, if it was regarded as an important matter, my superiors knew about it.

Q. Do you think that you told your superiors about it? A. I don't remember whether I did or not.

Q. If you would tell Mr. MacReynolds, you would tell them, wouldn't you? A. As I remember that testimony, he testified that he mentioned it to me first and I said that I had heard something of the kind.

Q. Mr. MacReynolds, was Mr. Hyde's name mentioned in that conversation between you and Mr. Whitney? A. (By Mr. MacReynolds) I mentioned the name, I know.

Q. What did Mr. Whitney say to that? A. (By Mr. MacReynolds) I can't recall the words, but it was as I gave it substantially, that what I had said was true as he had been told the same thing by Colonel Williams.

Q. What I want to get at, Mr. Whitney, is what Colonel Williams told you? A. (By Mr. Whitney) I cannot remember, Mr. Moss, the language of the conversation I had with Colonel Williams.

Q. Give me the substance of what he told you. A. So far as my general recollection of the thing is concerned, it was about what Mr. MacReynolds said.

Q. I am going to ask Colonel Williams to take the stand, or do you want to ask a question first, Mr. Chairman?

Senator Thompson.— You heard Mr. MacReynolds' testimony, did you not? A. Yes.

Testimony of COLONEL WILLIAMS:

Q. Mr. Williams, will you please tell us about the conversation that you had with Mr. Whitney, which he just says you have

had? A. I don't ever remember having any such conversation with him. I know very distinctly that I never could have. If I had talked with him generally on that subject, I never could have mentioned Mr. Hyde's name, because Mr. Hyde's name has never come to my mind in connection with it in the slightest.

Q. What person did you mention in talking with Mr. Whitney? A. I never mentioned any name to him, and I don't remember that I had a conversation with him.

Q. What is the fact about your being approached for the payment of money, or your Company being approached for the payment of money in connection with these subway matters? A. Mr. Moss, I don't think I ought to testify as to that. The public official whose name was involved is dead. The information, as it came to me, was only in the shape of a message. Whether the man who told me about it had any right to impart that message or whether the message had any basis of genuiness, I don't know.

Q. Who was the man that came to you? A. I decline to state.

Q. Did a man come to you purporting to deliver to you a message from Mayor Gaynor? A. No.

Q. From whom? A. From nobody.

Q. You said it was a message? A. That might have been a word too broad, perhaps. He told me what he thought could be accomplished.

Q. And did he mention the use of money? A. Yes.

Q. In connection with what? A. In connection with procuring a certain public official's support to our transit proposition.

Q. The transit propositions that we have been discussing in the present investigation? A. Yes.

Q. Now, what did the man say to you? A. I can't remember exactly what he said, but the substance of it was that by paying a certain sum of money —

Q. How much? A. $500.000.

Q. What then? A. That we could procure this public official's support.

Q. Which public official's support? A. I haven't mentioned his name. I have said that he is now dead.

Q. Who was the man that came to you? A. I decline to state.

Q. Why do you decline to state? A. Well, I see no reason for mentioning his name. In fact, I doubt very much the propriety

of my discussing this question. It was turned down emphati cally by me.

Q. Pardon me for interrupting you, but I want to ask you this question (and I do it only in a formal way, not meaning to reflect on you or any one else, but I think it is necessary, for the sake of the record, to ask you this question) — Do you decline to answer that question upon the ground that it might degrads or incriminate you? A. Not in the slightest.

Q. You turned it down? A. I immediately turned it down.

Q. Did you report it to your associates in the Company? A. I did not.

Q. Did you speak of it to any one? A. I think I may have mentioned it.

Q. To whom? A. I don't recall now.

Q. Did you mention it to Mr. Whitney? A. I am very sure I never gave it to Mr. Whitney in any detail whatever. I may have mentioned to him the fact that some such proposition or message had been sent, but I don't recall even doing that.

Q. Now, Colonel Williams, let me say this to you, so that you may understand the purpose of the questions before you take a final position — as I understand it, your Company was desirous of entering into the field in this subway business. Some force was keeping you out of it. At that time, a man comes to you and makes in substance the proposition which you have mentioned. Now, it seems to me, Colonel Williams, that in our effort to discover what hidden force may have been at work, either to prevent your coming in or to force another company over, or to mix the situation up, you ought to help us. If you give us that name, we can call upon that individual and trace him back. At the present time, it would seem that we are on the same footing. We want your help. A. Inasmuch as nothing came of this so-called message, I don't see that it can serve the purposes of the committee in any way.

Q. You know, there is such a crime as asking for a bribe? A. That wasn't done.

Q. But, that is for us to say from the facts. Is the individual who called upon you alive or dead? A. He is dead.

Q. Did any other person besides that person call upon you in

reference to this matter? A. What do you mean, in reference to this matter?

Q. With any corrupt proposals, or anything of that sort. A. No.

Q. Well, I think, Mr. Chairman, I will have to insist that Mr. Williams answer that question as to who it was.

Senator Thompson.— I want to say to Mr. Williams that I sympathize with him to a certain extent in not wanting to give this mane out. A. The man himself had absolutely no bad purpose. He merely reported what he supposed to be a fact, but he didn't purport to represent anybody.

Q. (By Mr. Moss.) Was he a director of the Interborough Company? A. I refuse to state.

Senator Thompson.— I think the Committee will have to direct the witness to answer, so, as Chairman of the Committee and in behalf of the Committee, I direct you to answer the question. A. I decline.

Senator Thompson.— The witness declines.

Mr. Moss.— It is up to you —

Senator Thompson.— It isn't up to me. It is up to the Committee to take such course to get the answer as the law provides. A. I don't think you want the answer, and I don't think you would consider it fair to dead men to have their names mentioned.

Senator Thompson.— I say, I sympathize with you to a great extent. I hate to see this thing switched to dead men all the time. I don't like it, but Colonel Williams, we have a duty to perform, you know. You owe a duty to your railroad, and you observe it, and you do it well; we have a duty to the State, and we try the best we can to observe it and do it as well as we can. That duty requires, I think, that we insist on this information, because we have to continue this investigation according to the way it works itself out. A. Of what possible benefit would it be for you as evidence, if I mention the names of men who are now dead?

Senator Thompson.— I can't tell until we know the names and what his associates were. All that has great bearing on the propo-

sition. A. The information is absolutely useless as evidence, as I understand it.

Mr. Moss.— We can't tell about that, because this is not a court, Mr. Williams, it is an investigation, and information that you get may enable us to follow other lines and find out who was associated with the man who brought the offer to you. It opens up a road which we have to follow.

Now, while the matter is hanging in abeyance, I think you ought to tell us more definitely what it was that the man said to you. You have given us the substance of it, but what did he say? A. I have given you substantially all there was of it. That was the important thing that lodged in my memory. It shocked me very much at first to think that the public official whose name was mentioned could be connected with any such matter at all. I think I laughed at the suggestion, and further than that, I have no information whatever.

Q. He told you that, in his opinion, by the payment of $500,000 to this official, you could obtain some position or favor or something — what was it that you could get for that? That is what I want to know. A. We would get the support of this public official.

Q. For what? A. For our proposition.

Q. Was that the whole of the transit situation then, or a part of it? A. That was very soon after our proposition was submitted.

Q. To take the whole? A. No, to take a part of it.

Q. Well, now, was this man who expressed this thing to you a man of small standing or was he a man of substance? A. I would rather not describe him.

Q. Don't you see, Mr. Williams, if a man came to you who was nobody and stood for nothing and wasn't known in the community at all, you might treat him as a crank or mischief-maker and turn it down as a matter of no consequence, but if he was a man of standing, then it would look entirely different. That is the reason I ask you that question. Was he a man well known? A. I must decline to describe him.

Q. Was he a director of the Interborough? A. I decline to state.

Senator Thompson.— In behalf of the Committee, I direct the witness to answer the question. A. I decline.

Q. Did you communicate with the official of the City of New York whose name had been mentioned to you by that gentleman? A. I did not.

Q. Why not? A. I didn't see any reason for doing it.

Q. Well, was that person whose name had been mentioned a member of the Board of Estimate and Apportionment, had he a vote on your proposition? A. Yes.

Q. Well, now, if somebody came to you and told you that you could have the favor of that man for $500,000, why didn't it occur to you as a very natural thing that you should tell him at once about it, and in that way get his honest resentment in your favor? A. Well, I couldn't have done that without betraying the person who imparted the information to me.

Q. Why should you protect that person? A. Well, there is such a thing in life as honor and loyalty to acquaintances.

Q. Had you any reason to have honor and loyalty with that man? A. Yes, that man did nothing but what you or Senator Thompson or anybody else might have done.

Q. I wouldn't do that. I wouldn't carry an offer for a bribe. A. This wasn't an offer. I wouldn't say that it was an offer.

Q. You haven't told us exactly what it was, that is true. I am trying to get at it. A. It was the same kind of statement that any man in this room might have made to me, that he had reason to understand that certain public officials' attitude on this transit matter might be made favorable to the Company by the payment of a certain sum of money. We hear those things said quite frequently.

Q. Was that man a friend of the official who is dead? A. I don't think he was.

Q. Was he acquainted with him at all? A. I don't think so, but as to that, I don't know.

Q. Was he a friend of yours? A. Yes.

Q. If he was simply expressing an opinion, why did you get angry at it? A. I didn't say I got angry at it.

Q. Why did you become indignant at it? A. I didn't say that. I said that I laughed at it.

Q. But you said you were very much worked up over it. A. I said I was grieved over the suggestion.

Q. Why should you be grieved if it was nothing more than a mere expression of opinion? A. It is always a matter of grief to any self-respecting citizen that any public official should even be suspected of wrong-doing.

Q. If this great public official was ever suspected, don't you think, as a matter of public duty, you should have notified him of it? A. No, I don't think so.

Q. Did you ask this individual to meet you with the official? A. No.

Q. How long had you known that individual? A. I had known him for some years.

Q. Did you have business relations with him? A. I decline to characterize him any further.

Q. Well, I think you must answer that.

Senator Thompson.— In behalf of the Committee, I direct the witness to answer the question. A. I decline.

Q. Did you have large business relations with that man? A. I decline to answer.

Q. Did you ever pay him any money? A. I decline to answer.

Q. Did you ever pay him any large sums of money? A. I decline to answer.

Senator Thompson.— You must understand that it is the direction of the Committee to answer all these questions. A. I decline to answer them.

Q. Did you pay him any sum of money within a year of the time that you had this conversation with him? A. No.

Q. Did you pay him any sum of money from the year 1909, between the year 1909 and 1914? A. I don't remember that I ever paid him any sum of money at all.

Q. Was that man a director in the Interborough Company, which was your rival in these subway propositions? A. I have already answered that twice or three time, I think.

Q. But, you were putting it on a different ground.

Senator Thompson.— You haven't answered the question. You

declined to answer it, and, on behalf of the Committee, I direct you to answer that question. A. I decline to answer it.

Q. What good and honorable reason could there be for a director of your rival, the Interborough Company, to come and tell you how you could make your peace with this powerful official? A. I don't know of any such reason.

Q. Do you say that you did not repeat or refere to this conversation with any other person connected with your Company? A. No, I didn't say that.

Q. Did you? A. I have mentioned it confidentially to perhaps two or three people since that time, possibly three or four connected with our Company.

Q. Did you mention it to any one else? A. I think I may have mentioned it to some other people.

Q. Who were they? A. I don't recall now distinctly.

Q. Mention one person to whom you mentioned this. A. I prefer not to.

Q. I request you to do it. A. I decline.

Senator Thompson.— The Committee directs you to do so. A. I decline.

Q. Have you any way of coming closer to the date of this conversation? A. It was some time after our proposition of March 2, 1911, was placed before the Public Service Commission and before the McAneny Committee's report of June 5, 1911.

Q. Is that as close as you can lay it? A. Sometime between that period. It was several weeks at least after our first proposition was submitted.

Mr. Moss.— Do you wish to ask any questions, Mr. Chairman?

Senator Thompson.— Do you know Mr. Hyde? A. I have met him occasionally, yes.

Senator Thompson.— Did you meet him between those dates mentioned? A. I don't think so.

Senator Thompson.— Did you communicate with him in any way? A. Not in the slightest.

Senator Thompson.— Did you have any one call on you that mentioned his name or came from his office? A. No, sir.

Senator Thompson.— Or was connected with him? A. Not to my knowledge.

Senator Thompson.— Mr. Hyde was then what? A. I really don't know.

Senator Thompson.— Was he a public official? A. I really don't recall. I think he was City Chamberlain at that time, but I am not sure.

Mr. Hyde.— I would like to ask this witness if I ever spoke to him in my life about this transit proposition.

Senator Thompson.— I will make a trade with you — the witness will answer your question if you will tell me whether you were City Chamberlain at that time.

Mr. Hyde.— I was City Chamberlain from the 3d day of June, 1910, to the 6th day of January, 1911. I think those dates are correct, and, if they are not, they are ascertainable.

Senator Thompson.— Colonel Williams, will you answer the question that Mr. Hyde asked me to ask you? Did you talk with any one from the City Chamberlain's office. A. (By Colonel Williams.) No. Mr. Hyde was in no way, not the remotest, as far as I am concerned, thought of in connection with that interview.

Senator Thompson.— You knew that Mr. Hyde was friendly to the Mayor at that time? A. I assumed that he was, yes, sir.

Senator Thompson.— Did any of your officials talk with him? A. Not that I know of.

Mr. Hyde.— I would like you to ask every man connected with either of the railroads the question you have asked this witness, if I ever spoke to them or communicated with them about the transit situation.

Mr. Moss.— Certainly, I will do that. Now, what do you want me to ask?

Mr. Hyde.— I want every official connected with the railroads, these companies which are subject to investigation, if I ever discussed with them the transit situation.

Mr. Moss.— You mean those who are not here.

Mr. Hyde.— I don't care who they are.

Mr. Moss.— Well, Mr. Williams is here and I have asked him.

Senator Thompson.— That will be done in a regular way. Now, of course, somebody might come on who would be an official of the railroad, and we might forget to ask that question. We are glad to have you here, or your representatives, and if you want to keep track of the witnesses —

Mr. Hyde.— I haven't got time to keep track of this investigation.

Senator Thompson.— It is you who are involved, and you ought to attend to it.

Mr. Hyde.— I am not involved. This is the most slanderous thing I ever heard of in my life.

Senator Thompson.— I am perfectly willing to say for the five-hundredth time, we are open. These are public sessions. Anybody is welcome to come here and make a request to have any question put, and we will do it just as fast as we can get to it. You are welcome to come here and have these various matters put on the record at any time.

Colonel Williams.— In justice to Mr. Hyde, I want to make sure that he understands and that you understand that in no way in my mind or in my information, or in any way, is he connected with that instance that I have just been asked to testify about.

Q. (By Mr. Moss.) What did you say to Mr. Whitney as you passed the bench? A. (By Colonel Williams.) I told him that I never had any such conversation with him as he described.

Q. You told him that you never had that conversation? A. Yes. What I referred to in passing Mr. Whitney was the statement that he made with reference to my having mentioned Mr. Hyde and $50,000. I never made any such statement as that.

Senator Thompson.— The only difference is that you didn't mention Mr. Hyde's name, and that the amount was different? A. I never talked with Mr. Whitney about it. If I did, it was in the most general way and without any details.

Senator Thompson.— You don't think that Mr. Whitney testified to anything different than the truth, do you? A. I think he is entirely mistaken in regard to what he has testified to today. I think, upon reflection, he will concede that himself. I certainly think you ought to ask him whether, in view of what I have testified to, he still thinks that I mentioned any amount to him or mentioned any name to him. You should ask that in justice to Mr. Hyde at least.

Mr. Moss.— Certainly, we will do that.

Testimony of TRAVIS H. WHITNEY.

Q. (By Mr. Moss.) Did Mr. Williams mention to you any name, the name of Mr. Hyde or any one? A. As I said awhile ago, Mr. Moss, I couldn't remember for certain any conversation with Colonel Williams. My impression is that I heard some such story as that back at that time, or shortly after that time, but I can't recall that any specific name was mentioned.

Q. Did he mention any amount to you? A. I don't remember.

Q. You don't remember whether he did or not? A. I don't remember the amount spoken of.

Q. To whom did you communicate what Mr. Williams told you? A. I don't remembet that I spoke to anybody, but my impression would be that if such a matter as that was under discussion over at our place, that Mr. Willcox and Mr. Harkness would know about it.

Q. Did you mention it to Mr. Willcox? A. I don't remember that I did specifically.

Q. Did you mention it to Mr. Harkness? A. I don't remember specifically speaking to them, but they may have discussed it, we may have discussed it.

Q. What was the name of the public official on the Board of Estimate and Apportionment that was mentioned? A. My impression is that the matter under discussion at that time was the attitude of the Mayor with respect to the transit situation.

Q. Was a sum of money mentioned? A. I don't remember the specific amount.

Q. Can't you refresh your recollection? Was *a* sum of money mentioned? A. It may have been in the story that I heard.

Q. Can't you refresh your recollection upon that rather important matter, Mr. Whitney? A. I will be very glad to think the matter over, Mr. Moss.

Q. In justice to everybody that is concerned, we ought to have just the facts and as little in the air as possible. A. I am trying my best to recollect.

Q. As soon as I knew what Mr. MacRaynolds would say, I sent for Mr. Hyde. I wanted him to be here and say what he had to say at once. I want to get this matter out of the air and on the earth, in justice to everybody, not only the dead but the living.

Now, tell us what was said, Mr. Whitney, if you possibly can, about money? A. I can't go any further than I have, Mr. Moss.

Q. Was the person's name mentioned who had been to see Colonel Williams? A. I don't recall that. Mr. MacReynolds used Mr. Hyde's name.

Q. I am speaking about the conversation with Mr. Williams. Was anybody's name mentioned? If so, whose? A. Well, I can't remember about that, Mr. Moss, and I have no reason for not wanting to remember.

Q. When Mr. MacReynolds mentioned Mr. Hyde's name, why didn't you tell him he was mistaken, why didn't you tell him it was somebody else? A. Because I didn't know.

Q. Well, do you say that Mr. Williams did not mention Mr. Hyde's name? A. I won't say that he didn't. I don't know whether he did or not, as I recall it now.

Q. Didn't it strike you as being not only a wonderful thing, but a dreadful thing that Mr. Williams communicated to you? A. Well, it is very apt to be true in respect to public officers who are dealing with important matters that stories get circulated that somebody is wanting to sell them out, wanting to collect money on the fact that action is going to be taken on a matter that is up for action one way or the other.

Q. Well, when that is a danger that public officials run, isn't it up to the public officials that are in office, when they hear of a thing of that kind, to make sharp and clear note of it, so that justice may be done to the officials whose names are mentioned? A. Yes.

Q. Did you make any note of this matter? A. No, sir.

Q. And it has got away from your memory, as you tell us here

today? A. I wouldn't be absolutely sure, Mr. Moss, that I talked directly with Colonel Williams or whether I got it from Mr. Harkness or Mr. Willcox. Colonel Williams during that period of time was in the office of the Commission a very great deal, attending conferences with the Commission or with the conferees, and during the course of his waiting for one of those conferences, or, while he was sitting in the room ——

Q. Do you think that Mr. Harkness told you this story? A. I wouldn't be sure.

Q. Do you think that Mr. Willcox told you this story? A. I am not sure.

Q. Instead of Colonel Williams? A. I am not sure.

Q. You see the chain right here in front of us. Mr. MacReynolds said he had a conversation with you. You remember the conversation. Both of those conversations, as given to us, point to Colonel Williams. Colonel Williams takes the stand and denies the conversation with you, but says that a man came to him and mentioned the sum of $500,000. There is an apparent chain which shows the line of information coming down, up and down, like Jacob's ladder. Now, do you think it is possible that Mr. Harkness and Mr. Willcox are in this chain of knowledge or information? A. I don't know. They may very well have known it.

Q. Have you any recollection of anything imparted to you by Mr. Harkness or Mr. Willcox on this subject? A. Well, at about that time, as I said before, there was a very considerable amount of publicity going on with respect to the offers of the two companies. I think, as a matter of fact, the Mayor issued several statements attacking the B. R. T., and attacking their offer, and I haven't any doubt—

Q. Was this about the time of the attacks on the B. R. T.? A. Those offers were under attack during that period that Colonel Williams mentioned. I don't want you to have the impression, Mr. Moss, that I am attempting to be the least bit reluctant in respect to this matter. I am doing the best I can to recall this matter.

Senator Thompson.— You are impressing the Committee with the fact that you are trying to be careful. A. I want to do the best I can with respect to what I recall.

Mr. Moss.— The reason I ask you numerous questions is that your mind perhaps may be refreshed and the line of connection be opened. Well, suppose you wait a few moments, Mr. Whitney. Something may occur to you before we close, and I will ask Mr. Hyde to take the stand.

CHARLES H. HYDE, being duly sworn, testified as follows:

Q. Mr. Hyde, you have heard this testimony, and I invite you to make any statement that you care to make about it. A. Well, so far as my conversation with Mr. Williams is concerned, I never had it. At the present moment, I have no recollection of ever having discussed any of the subway offers with anybody, or any of the subway business. I may have at some time, because they were discussed, and I discussed and talked about many things with many people, but so far as being directly interested or having anything to say on behalf of anybody or making and requests, refusals or anything of the kind, I don't know anything about them.

Q. I invite you to make it just as broad as you want to make it. A. I make it broad and narrow—I have no recollection of anything at the present moment.

Q. Now, I want to ask you about another matter while you are here. Were you counsel for J. F. Stephens? A. J. F. Stephens?

Q. Yes, a contractor. A. Yes, in a way I was.

Q. Is this your letter? A. Yes, this is my letter.

Q. That refers to a tunnel. What tunnel was that? A. This is one of those Harlem tunnels. There were some bids on it. I remember that very well.

Q. What tunnels were they? A. That could be very readily identified by the time the bids were taken. You will find there were three types of tunnel bid for.

EXHIBIT NO. 1.

"Charles H. Hyde, Attorney.

"Dear Mr. Mayor:

"There is a controversy pending over the award of the contract for building the Harlem River Tunnel for the

new subway. I am one of the attorneys for J. F. Stephens, the low bidder on what is without doubt the best type of tunnel.

"Mr. Creuzbar would like about five minutes of your time to explain it to you. He could do it in that time and I couldn't. Creuzbar is leaving for Europe tomorrow. Will you see him? It is not a question that should be lightly passed over, and, while the bid accepted by the P. S. C. is the lowest, the type is not the best. Indeed, is not a safe one, aside from engineering questions.

"Yours sincerely,

"Charles H. Hyde."

Q. Will you explain this, Mr. Hyde? A. Yes. There were bids taken for this tunnel in three forms, as I recollect it. It may have been only two, but I think there were three. Mr. McBean was associated with Mr. Stephens. I only know Mr. Stephens slightly. I met him at the Waldorf and was introduced to him by Mr. McBean who was the principal man interested in this thing. Mr. Creuzbar was an engineer in connection with the matter.

Q. Was Sheehan a partner of McBean? A. What Sheehan?

Q. Had he a partner named Sheehan? A. I don't know.

Q. His name was John C. Sheehan. A. I don't know Mr. John C. Sheehan.

Q. Was this Stephens the same man who made the bid for the third tracking of the elevated railroads? A. I don't know.

Q. Was Stephens awarded this contract? A. No, sir.

Q. Wasn't the contract with Stephens approved by the Public Service Commission? A. I don't know.

Q. It was turned down in the Board of Estimate? A. I think so. I evidently wrote that letter to the Mayor and I had forgotten it, but I remember that I wen to the Comptroller about the mater. Whether I did anything else I don't know.

Q. Will you look at that, Mr. Hyde, and tell me what that Underwood matter is? A. Yes, Mr. Underwood and I were the joint counsel for this estate of William Zeigler, of which Mr. Gaynor was the executor.

Q. Then that has nothing whatever to do with subway matters? A. Nothing whatever to do with them.

Senator Thompson.— The Committee will have an executive session immediately, after which we will adjourn.

Adjourned until March 27th at 11 A. M.

MARCH 27, 1916

Testimony of COLONEL TIMOTHY S. WILLIAMS.

Examination by Mr. Moss.

Q. Mr. Williams, do you remember a conversation with Mr. Willcox recently in which you mentioned the call of a man upon you with reference to your being able to get rid of the hostility of Mayor Gaynor for $500,000. A. I wouldn't put it that way. No.

Q.Well, how would you put it? A. I had a talk with Mr. Willcox sometime within the last two weeks, I should say from recollection, generally about Subway matters, especially this investigation. As I recall the circumstances, he remarked that he didn't believe that any man connected with the city government had been improperly influenced in his official relation thereto by any corrupt consideratioon. I agreed with him, with one exception; I think I told him generally why I had some doubt about that particular individual. The individual's name, however, was not mentioned, as I recall it.

Q. Did you speak of any circumstances in connection with that individual? A. I referred in a general way to the incident about which you asked me last Saturday.

Q. Did you specify the amount that you specified on Saturday? A. I don't recall that I did.

Q. And wasn't the conversation such as made it relate only to the Mayor? A. You can make your own inference from that. I won't make any charge.

Q. Wasn't the matter under discussion—which you haven't given in detail — a matter which made the sum of $500,000 apply

only to that individual? A. I don't recall that I said anything to Mr. Willcox about any particular amount.

Q. Well, wasn't the conversation at that point with reference to Mayor Gaynor, though his name was not mentioned? A. I think it is fair to assume that we both had him in mind. I want to say further that I made no such remark to Mr. Willcox as he has reported in yesterday morning's papers as having been made.

Mr. Willcox.— That is true.

Q. I must ask you again, since Sunday has intervened and possibly you have thought of it —I must ask you again for the name of the individual who came to you with that suggestion.

Senator Thompson.— Before you answer that question, Mr. Williams, I want to just give you this suggestion: That you have stated here that it was a man that you knew, and that he was dead. Now, don't you think that in justice to everybody that is dead that you knew, that you ought to give this name? In justice to all the others that are now dead, that didn't come to see you in this matter? A. If I were to attempt to do justice to all the dead, I think I would have a rather difficult job.

In answer to your inquiry, I want to make this statement —

Q. (Mr. Moss.) Wait a moment: I would rather you wouldn't make a statement in answer to the inquiry. As to making a statement, that is another matter. But, will you give that name now, or will you not? A. I would decline to answer. In declining, I would like to make this statement,—

Q. Well, perhaps the Chairman would know what the nature of your statement is before you attempt to make it.

Senator Thompson.— I would be inclined to let him make any statement he would want to in this matter.

(Senator Thompson looks over statement.)

A. (Col. Williams.) This is an important matter, involving men's reputations, and I think that it calls for deliberate action.

Mr. Moss.— No objection to that going on the record.

Colonel Williams.— Since testifying before the Committee on Saturday last, I have consulted with counsel and upon their advice and without intending any disrespect to the Committee, I refuse to answer further questions relating to the subject of the Committee's inquiries of me on that day, except to reiterate what I then said in substance, namely, that the statement as to which I testified was made to me by a man now dead, who did not mention nor in any way indicate to me the name of any one who had communicated such statement to him; and so far as I know the communication of the statement to me was without any authority or knowledge of the public official referred to in the conversation, and that I promptly and emphatically refuseed to have anything to do with the matter.

"In our relations with the City officials in the matter of these contracts there never has been an act or interview, directly or indirectly involving bribery or corruption.

"My answer to any further inquiries on this subject could not be of any assistance to the Committee or be material to the subject matter of its investigation.

Mr. Moss.— Mr. Chairman, in pressing for an answer to this question, and without meaning in the slightest degree in what I say to intimate anything offensive towards Colonel Williams, the considerations that come to me are these:

"It is not a pleasant thing to investigate a matter of this kind at all. It is less pleasant when it involves people who are dead. But this is an investigation; and if it is to be an investigation, it must investigate wherever it leads, regardless of our own feelings and regardless of the criticisms that may be evoked toward us.

"Now, the attitude of the witness makes him the judge of the things that the Chairman should be the judge of. It leaves us — if it is persisted in, and is not followed up — unable to prove the statement of the witness that this individual is dead. I say that, as I indicated, without meaning to in any way be offensive to the witness; but I am led to this statement because I find that I myself have been criticised for having asked this

witness whether that man was alive or dead, upon the ground that I gave him an opportunity to say that he was dead.

A. (Col. Williams.) Do you mean to imply that I have lied upon the subject?

Q. I have already said that I do not mean this in a personal way at all. What I say would apply whether you were in the witness chair, or anybody else — that if this is an investigation, it would seem that we should all follow the lead where it takes us, regardless of the personality of the witness, regardless of other considerations. The answer of the witness leaves us without any way of proving up, or corroborating the statement that the man is dead who made the communication to him. And even though he be dead, the assumption of the witness that because the man did not state his authority to the witness we couldn't find out what his authority was, that again leads us into a position which we ought not to be in. It seems to me that this matter, having gone so far as it has, and so much having been developed, that it is necessary for us to know who that person was, and as definitely as possible what that person said, in order that we may determine what further investigations may be made, what sidelights may be thrown upon the situation, whether it ties him to other information that we may have that we may not yet have developed in public. In other words, the Committee should not be at the mercy of the witness, who really usurps the function of the Committee in determining what is relevant and what is proper; but if this is to be an investigation of this grave subject, a clue of this kind should be followed where it may lead us, and regradless of the personality and the feelings of the witness who may be before us.

"I could say more, but I think I express the thoughts that are in my mind.

Senator Thompson.— I am sorry that if any of the sessions of this Committee become lacking the unformality with which we have conducted these investigations right along. We have simply come here, we have got into these subjects, and as they have developed from day to day, every development carrying with it a question mark for the next day or the next week or something; and it has to continue. Now, it isn't from choice of any mem-

ber of the Committee, and I am sure any employee of it, or the body that created it. But we have gone on here, we have developed certain facts that without any further explanation, at least, are criticisable from a public point of view, and have involved the Dual Subway Contract. Now, it isn't fair to even the Contracts themselves, the railroads, or anyboody else involved, that an investigation shouldn't be absolutely continued until the subject is exhausted. And matters come up in a way that the Committee don't know — and this is a very good example: No member of the Committee, or the counsel of the Committee, on Saturday morning before the Committee went in session, knew a thing about this except what Mr. Scott MacReynolds had stated to Mr. Moss, which was practically what he testified to. I am told that nobody knew what Mr. Whitney would testify to, nor what Mr. Williams would testify to. But that evident statement made on a car showed that it was founded upon substance, and such substance that the matter continued in the mind of Colonel Williams up to three weeks ago, when he talked to Mr. Willcox about it. And a matter of that kind, in the mind of a president of a great railroad system —

Mr. Moss.— In which the City is interested —

Senator Thompson.— Is much more serious than a similar idea in the mind of some citizen that doesn't have in charge these matters. And the fact that that thing did become serious enough in Colonel Williams' mind for him to remember that circumstance through these years, makes it important. Now that is the way the Committee feels about it, I think; and of course, it might be just simply a commentary on how much better Mr. Williams' recollection is than that of the president of a similar corporation down here drawing about the same salary; but we think it is important. Now, we couldn't take it up in any other way; as we heard the story it didn't involve any dead man. And personally investigating the business matter, the City's partnership with the railroads here, it is our duty to take up any phase of the situation which is pertinent — whether it involves live men or dead men, or who or what. Right is right, and nobody need be afraid of the length of time of an investigation and the result of it, if it is right; and

Wrong ought to be afraid of it; and that is about all I know about it.

Colonel Williams.— You understand it doesn't affect our contract in the slightest.

Senator Thompson.— The very fact that you gave no credence to this suggestion — or whatever it was — certainly does not put you in an unfair light; and this is a matter which is a public matter. It is the Public's franchise, it is the Public's transportation system; and it is the Public that we represent. And I don't like this personally; it isn't a good job at $1,500 a year at all; I don't like it. But we have got to do it, we have got to go through it; there is no other way out of it. I want to continue to do it as we have, without any more formality about it than we have got to have. And I do hope that we will get the cooperation of the railroads and the railroad officers, and everybody else — the citizens and everybody else that knows anything about it. We can report the proper judgment then, under the circumstances.

Colonel Williams.— I offered you heretofore, and I offer you now, my earnest cooperation in all legitimate avenues of research, so far as they affect the relations of our company with the Dual System contracts. But as to this particular matter, I stand on the statement which I have just made; and I see no reason to change my opinion, after your statement.

Senator Thompson.— The Committee's direction to answer is continued. A. (Col. Williams.) I decline to answer.

Mr. Willcox.— I just want to say, as long as you may not want to ask me questions, that I was quoted in several papers yesterday as having said that Colonel Williams said to me that Mayor Gaynor was in the market if opportunity arose and somebody had the money. Colonel Williams never made that remark to me. I doubt whether he would make it, and I doubt whether I would permit anybody to make it in my presence.

Q. (Mr. Moss.) When you were talking with Colonel Williams and this matter of $500,000 came up, who was to be under discussion? A. We were discussing the general subject; but, as the Colonel has said, in my mind while the name wasn't used, I thought he had reference to the late Mayor.

Senator Thompson.— Why do you say that you wouldn't permit anybody to make a statement on that? A. If I was in discussion with anybody, in a discussion of this Subway question, having spent so much time with Mayor Gaynor, I would not permit a man to utter such a slanderous statement.

Senator Thompson.— Supposing it was true? A. I am stating it from my standpoint; I am stating a case of an actual conversation.

Q. (Mr. Moss.) Did you reprove Colonel Williams for as much as he did say? A. No, I did not; because he didn't make this statement.

Q. Did you reprove him for as much as that? A. I did not.

Q. Did you dissent from it? A. I didn't dissent from any statement he made as a matter of his experience of a man coming to him. But I did say that I didn't believe that there was any city official in any way connected with bribery or scandal connected with these contracts.

Q. Did you say that you did not believe the man who came to Colonel Williams did so with the authority of the Mayor? A. I don't know whethere we discussed it to that extent.

Q. You don't think you said that, do you? A. I don't know; I don't recall saying it.

Senator Thompson.— What I want to get at is this: If somebody like Colonel Williams, who I understand is a responsible and prominent citizen here —if somebody said that to you like him, and he was willing to follow it up with proof, do you mean that you wouldn't hear it? A. I covered that in my statement. I said that he didn't make the statement, that I didn't think he would make it, and that I wouldn't listen to that kind of a statement.

Q. Don't you think he would make it if it was true? A. I think he would.

Q. And if it had been true, wouldn't you have listened to it? A. I don't think he would have made the statement because I don't think it is true.

Senator Thompson.— You did that — and the reason why I ask is because it is a sort of a criticism of this Committee — and I wonder if you, a Public Service Commissioner, heard one of these things, that somebody would possibly have proof about, do

you mean that you wouldn't listen to it? A. If I had proof I would come and tell you.

Q. And wouldn't you listen to it long enough to find out whether it was so or not? A. This is not true. This statement that I read was not true. I said I don't care to listen to that kind of a statement affecting public servants in whose honor I believe.

Q. Do you mean to say that you wouldn't allow facts to interfere with your ideas? A. I would allow facts to be stated, and I would come and state them to you if I had the least ground.

Mr. Moss.— Mr. Whitney said that possibly he had heard this story from you rather than from Mr. MacReynolds. Did you ever state anything to Mr. Whitney about this matter? A. I have no recollection of ever hearing the story referred to in the testimony the other day.

Q. So, if Mr. Whitney had that thought, he was mistaken? A. I wouldn't want to say that. Mr. Moss. As I have said to you, if Mr. Whitney or any other reputable man told me that they had said something five or six years ago, and remembered it, and they could swear to it —

Q. He didn't say that he read it; he had a sort of impression that it might have been so. A. I haven't the slightest memory of it.

Senator Thompson.— You don't remember Colonel Williams ever talking to you about this particular charge? A. No.

Q. About the transaction? A. He talked Subways for years.

Q. But this particular thing — A. Not this particular charge, or anything reflecting on anybody.

Senator Thompson.— If Mr. Whitney had any ideas on it, he got it from somebody besides you? A. I think he must have.

Senator Thompson.— It is very hard for members of this Committee to have a hearing in New York and legislation at Albany both at the same time; and we have tried to hold week-end hearings because we didn't want in any way to have anybody think that we were delaying this investigation or we find that there is somewhat of a limit to human endurance, and we don't expect to hold only just whatever is absolutely necessary in the way of investigation of Webb during the remainder of the session of the Legisla-

ture. So that the adjournment that will be taken today will only be a tentative adjournment, without any expectation of a hearing next week. We will adjourn from week to week, but we will not expect to have any formal hearings, but will conclude the investigation every day at the adjournment of the Legislature until it is done or our time expires. So, in taking this adjournment it is on the understanding that we may not have a hearing soon. If, in the meantime, anybody has anything that they want to bring to the attention of the Committee, or if anybody feels that they want to put a statement on the record, or give us any information that they are willing to do under oath, if they will come to us, we will take it up on the meetings that we have.

Mr. Willcox, here is a matter that was given us by Henry B. Seaman. It involves matters when you were Chairman of the Public Service Commission. I will make it an exhibit later, but I would like you to take that and go through it; and if you have any statements to go in with it at the same time, why return it to me and we will put it on. So you may put that in your pocket and read it.

Now, for the purpose of taking up matters of Accounting, I will appoint the Chair, and Senator Towner and Senator Foley as a sub-committee. That sub-committee has authority to sit during the recess of this Committee. We will suspend now until next Friday morning at 11 o'clock — that is, March 31st, at 11 A. M.

MARCH 31, 1916

MUNICIPAL BUILDING, NEW YORK.

FRIDAY AFTERNOON.

Committee came to order at 11:30 A. M., and suspended until 2:00 o'clock P. M.

EDWARD W. GROUT is duly sworn.

Q. Mr. Grout, you rendered some legal service to the Interborough Rapid Transit Company, didn't you? A. I did.

Q. When were you employed to render those services? A. In the early part of June, 1911.

Q. Who employed you? A. Mr. Shonts.

Q. What did he say to you in employing you? A. He told me that Mr. Rogers was about to go to Europe and he would like me to take charge of the negotiations.

Q. The negotiations with whom? A. With the City, with the Public Service Commission and the Board of Estimate Committee.

Q. Did Mr. Rogers go away? A. Shortly, thereafter.

Q. Did you take charge of the negotiations? A. I did.

Q. How long did you have that matter in hand? A. The greater part of two months.

Q. Did you keep a record of the services that you performed? A. Some record, yes.

Q. You haven't that record with you? A. I have not. I wasn't asked to bring it.

Q. Are you able to state in a general way what you did and who you saw? A. I am.

Q. Proceed, please. A. When Mr. Shonts first saw me, the McAneny report, so-called, had not been made public, and I told him that I would want to wait until that report was made and examine it before I would say whether or not I would undertake the matter. Shortly thereafter that report was made and I examined it. It was a pamphlet of some size.

Q. Now in order to have the record straight will you state what this McAneny report was? Whom did McAneny represent? A. Mr. McAneny was the Chairman of the Board of Estimate Committee with Mr. Cromwell and Mr. Miller as his associates and I think it was not a joint report. It was a report upon a communication which had been made some six months before by the Public Service Commission to the Board of Estimate and dwelt with the proposition of the two railroad companies in regard to these new routes. Now, I can't tell you the details of it.

Q. I don't ask you for the details, but I wanted to locate it so that the record would be clear. A. It was dated I think about the 5th of June. After examining it, I saw Mr. Shonts again, and told him that if he was not going to present the objection against the Brooklyn Rapid Transit Company coming into Manhattan, I wouldn't undertake it.

Q. What did he say about that? A. He agreed. I then had various conferences with Mr. Shonts, with Mr. Freedman and with Mr. Gaynor (Mr. Gaynor who was the Auditor), and also with Mr. Rogers. Mr. Rogers saw me two or three time before he went away so as to give me full familiarity with what he had been doing up to that date. Then, I started in to try to get the negotiations started again. Mr. Shonts was feeling very much aggrieved at the terms of the McAneny report and took the position that he wouldn't go to the city officials and have any more negotiations, that they would have to open them. I was at work for some time, I personally saw various members of the Board of Estimate and of the Public Service Commission (I suppose practically all of them) in the effort to get some basis on which negotiations could be renewed. Mr. Shonts was entirely unwilling to do anything along the lines of the McAneny report. Finally, one day toward the latter part of June I was in Mr. Shonts' office with Mr. Freedman, and Mr. Kingsley Martin came in. He was then Bridge Commissioner and was acting for the Mayor, and I tried to get Mr. Shonts to agree that I should telephone to Mr. McAneny and make an appointment that afternoon for him to see him, and he was very reluctant. Then, Mr. Seth Low, formerly Mayor, came in who was Chairman of a committee appointed by the Chamber of Commerce to act as an intermediary in these negotiations, and Mr. Low seconded my efforts and finally Mr. Shonts very reluctantly agreed and I telephoned to Mr. McAneny and the result was that we made the appointment that afternoon, and all the persons that I have named went up there. Shortly after we came up there, Mr. Willcox came in and that was the beginning of the new negotiations.

We struggled along for some time before we could meet any basis. There were various meetings at which were present all the members of the McAneny Committee and most of the members of the Public Service Commission, Mr. Shonts, Mr. Freedman, and Mr. Gaynor and myself representing the Interborough and Mr. Morgan and Mr. Davison.

After some time, along in the early part of July, on a Friday, Mr. Willcox phoned me and asked me to lunch with Mr. McAneny, himself and Mr. Low at the Hardware Club and talk this matter

over, saying he thought he had a suggestion which would open the way to arrangements.

Q. Do you remember when that luncheon was? A. It was along, I imagine about the 10th or 11th of July, I can't tell just exactly the date. Then, subsequently Mr. Willcox telephoned me and withdrew the invitation, but asked me to hold myself in readiness to come up after luncheon, saying that he thought the other three could talk more freely if I were not present.

About half past two he telephoned me and I went up there and Mr. Low had gone, but Mr. Willcox and Mr. McAneny were there, and then they made to me the proposition that in place of what had theretofore been discussed as the basis of the contract the Interborough should have a preferential dividend of eight per cent. and there were various other matters of detail that I don't remember. That was the vital thing, of course.

I left them, after we had talked for an hour or two, we went down to Mr. Shonts' office—(this is the way I remember it was Friday, because Mr. Shonts left town for over the week end.)

Senator Thompson.—When was that? A. All of this was in June and July, 1911. I had no connection with the matter except at that time. And I communicated the proposition to Mr. Pepperman and he told me that after two or three hours we could get Mr. Shonts at the other end of his journey and he would call him up and tell him about it. That was the beginning of the matter. There were a number of conferences in the Interborough rooms for several days and finally we made a counter-proposition of nine per cent. preferential.

"Then, there were several conferences both downtown and uptown at Mr. Willcox' house and I think once at the Metropolitan Club. At those conferences uptown were present, Mr. McAneny's committee, at one of them was present also Mr. Mitchel and Mr. Prendergast, Mr. Shonts, Mr. Freedman, Mr. Gaynor and myself representing the Interborough at two or three of them, I think three, Mr. Morgan and Mr. Davison, and Mr. Willcox, Mr. Eustice, Mr. Maltbie and Mr. Bassett; I think practically all of the Public Service Commissioners, though Mr. Maltbie was present less often than others and finally just before the meeting of the Board of Estimate, at which this came up, the

proposition was agreed upon by the various representatives and was presented at the Board of Estimate meeting. Mr. Prendergast at first was in favor of it and then changed his mind and voted against it. Mayor Gaynor was at no time in favor of it during any time that I represented the Interborough and the matter was voted down.

"I waited until the next winter before sending the further bill, because I wanted to see what the result of my woork was going to be. The matter was taken up in the fall by the Pennsylvania Railroad, not by the Interborough, and as I understand it was put through finally by the efforts of the Pennsylvania Railroad, the percentage of the preferential dividend being reduced from nine per cent. to eight and seventy-six one-hundredths. That it, in brief, the work that I did.

Q. Had you done any work for the Interborough Rapid Transit Company before that time? A. I had not, nor since.

Q. Or any subsidiary or connected corporation? A. Not that I know of.

Q. Do you know how it came that you got into this matter, how you reached them? A. I understood from Mr. Shonts and Mr. Freedman that Mr. Freedman recommended me, I had known Mr. Freedman for many years.

Q. Did you know that Mr. Freedman was going to recommend you? A. I did not.

Q. Did it come to you as a surprise? A. It did.

Q. And did it come to you in the shape of a written request or personal letter? A. Mr. Shonts' secretary telephoned me and asked me to call on Mr. Shonts, which I did.

Q. Had you met Mr. Shonts before that? A. Oh, I think so. I had met him a number of times.

Q. Had you a social acquaintance with him? A. I don't know how you would define it. I had met him.

Q. You had had no business relations with him before that? A. I had not.

Q. Have you given us all of the conversation you had with Mr. Shonts at the time you were retained? A. Oh, no; I simply couldn't. We had a long talk over the situation.

Q. Did he tell you how he had come to send for you? A. He told me that Mr. Freedman had suggested me, that Mr. Rogers

was going away and that he had to have somebody to take charge of it.

Q. Did you have conversations with Mr. Freedman afterwards? A. I did.

Q. Consulted with him right along, didn't you? A. Oh, yes, he was in all the negotiations side by side with Mr. Shonts.

Q. Was anything said in these conversations about any particular members of the Board of Estimate and Apportionment? A. There was not.

Q. Was the name of Mr. Mitchel mentioned? A. They were all mentioned, but no special mention of one rather than another.

Q. As to the probable attitude of Mr. Mitchel? A. I don't remember any discussion of the probable attitudes of anybody. There was no probable attitude, because there was no proposition at that time. They were absolutely at a break.

Q. But you were expecting a report, the so-called McAneny report, which to a degree was to speak for the Board of Estimate and Apportionment, wasn't the attitude of the different members of the board discussed in the conferences between you and Mr. Shonts and Mr. Freedman? A. Not at all that I know of.

Q. Was the probable attitude of Mr. Prendergast discussed? A. No.

Q. Was the probable attitude of Mayor Gaynor discussed? A. It was not.

Q. Was anything said about the fact that you were formerly associated with Mayor Gaynor in business? A. Not a word.

Q. Was that fact never mentioned in any of these conversations? A. Not ever mentioned in my hearing by anybody. That association was nearly twenty years before and it was only for one year, the year 1893.

Q. Did you meet Mr. Hawley during these negotiations? A. I did attend two mettings of the Board of Directors of the Interboroguh. I think Mr. Hawley was present at those meetings, but I am not sure. I had no personal conversation with him.

Q. Didn't Mr. Hawley have any conversation with you during the time that you had this matter in hand? A. No.

Q. You are quite confident that your memory carries you back to that date, so that you could be accurate? A. I am. Mr. Hawley was a member of the Board whom I knew in another connection.

Q. In what other connection? A. He was a director of a real estate company of which I was director and counsel, the Garden City Estates, and I had seen Mr. Hawley in that connection. I had a very slight acquaintance with him. The Interborough matter was never a matter of discussion between Mr. Hawley and myself.

Q. Did you know of any purchases of Inter.-Met securities during the period that you have told us about? A. I did not.

Q. Did you know whether or not Mr. Freedman was in relations with Mr. Hawley in conferences and in relations with Mr. Hawley during that period? A. I did not.

Q. Did Mr. Freedman mention Mr. Hawley to you? A. He did not. The only people connected with the Interborough with whom I had any discussion during these negotiations were Mr. Shonts, his secretary, Mr. Pepperman, Mr. Freedman, Mr. Rogers, before he went to Europe, Mr. Gaynor and Mr. Headley.

Q. Why did you say that you would decline to be connected with this matter if the B. R. T. was to be shut out of Manhattan? A. Because I thongh it was desirable that the B. R. T. to be discriminated against? A. I so told Mr. Shonts and I effort to keep it away.

Q. You were willing to decline a retainer if the B. R. T. was to be discriminated against? A. I so told Mr. Shonts and I told him correctly.

Q. Did you know any of the people in the B. R. T.? A. Oh, yes.

Q. Who did you know? A. I knew Mr. Williams, as president, I must have known some of the directors at that time, but who they were I couldn't tell you now.

Q. Did you see Mr. Williams frequently? A. I did not. I wasn't on particularly agreeable terms with Mr. Williams.

Q. Had you talked with any one connected with the B. R. T. before you took this retainer? A. Not a word.

Q. Were you simply expressing an opinion that you had as

a citizen interested in transit conditions? A. Yes, and particularly as a citizen of Brooklyn, I thought it was to the interset of that Borough that there should be a connection between the Brooklyn system and the line running up through Manhattan.

Q. Can you give us the date when Mr. Shonts said that he would not oppose the coming of the B. R. T. into Manhattan? A. It was the day after we got the McAneny report, when I had gone through the McAneny report.

Q. We can locate that easily. Who else did you know in the Board of Directors of the B. R. T.? A. I don't recall who they were. I know a great many Brooklyn people, and I presume I knew in one way or another the members of that Board of Directors, but I don't recall who they were.

Q. Did you ever call upon Colonel Williams at the office of the B. R. T.? Did you ever see him there? A. Well, I don't recall ever doing so, I wouldn't want to say I never did.

Q. Did you ever see him at his house? A. Never.

Q. Do you remember when you were last at the B. R. T. offices? A. It must have been a great many years ago, it must have been years before this time, I don't assert that I ever was there, but I wouldn't want to deny it because it is impossible to recall such things, never in any connection with subway matters.

Q. Now, what would you say was the general nature of the services that you rendered to the Interborough? A. I have told you what they were.

Q. But what was the purpose of it? A. The purpose was to negotiate, if possible, an arrangement between the Interborough and the B. R. T. which would satisfy the situation to both of them for the construction of additional subway lines by the Interborough and the city to negotiate arrangements between the Interborough and the city for the construction of additional subway lines by the Interborough on terms that would be possible and satisfy both sides.

Senator Thompson.— How could you do that without knowing the attitude of the city officers? A. I didn't say that I didn't know the attitude of the city officers.

Senator Thompson.— That is the way I understood you. A.

I was asked whether I had discussed the attitude of the city officers with Mr. Shonts and I said I did not. I answered that only in regard to the first day.

Q. (By Mr. Moss.) When did you begin to discuss the attitude of the different members of the Board of Estimate and Apportionment? A. As these conferences went on there would, of course, be a discussion of what had been said by one and the other. It wasn't exactly a discussion of the attitude.

Q. These men did take positions on the propositions, didn't they? A. Constantly shifting positions as is always the way in any large negotiation. No man in a large negotiation starts in by saying definitely that he will or won't do this particular thing if he expects to get results.

Q. Wasn't there any man who was consistently opposed to the B. R. T. in New York? A. I never heard of it.

Q. Was there any one that opposed the coming of the B. R. T. into New York at any time? A. Not that I know of. I think from the beginning as far as I recall it the city officers seemed to be in favor of it. At first it was my understanding from the newspapers that Mr. Shonts and Mr. Rogers were opposed to it. That is the reason why I made that suggestion to Mr. Shonts, but I don't know that any of the city officers were ever opposed to it.

Q. If the city officers were not opposed to it, what was the point that you had to get at, what was the point of the negotiations that you had to conduct? A. If the city officers were not opposed to the B. R. T. coming into Manhattan, I had nothing to do with that at all.

Q. I don't know that we have it clearly just what you are "driving at"—(I use that in a colloquial sense). I don't think the record will show clearly what it was that you were aiming at in these negotiations; can't you state it more clearly? A. I can only repeat what I have said. I was aiming to negotiate a satisfactory arrangement between the city and the Interborough by which the Interborough would build these subway lines on terms mutually satisfactory. I had nothing to do with the B. R. T.

Q. Didn't you come into contact with the B. R. T. people at all? A. No.

Q. Wasn't the proposition discussed by which the B. R. T. and the I. R. T. were to divide territory? A. No, sir, that had been practically settled by the McAneney report, which apportioned the different routes, and the question that we were concerned with was the question of the terms on which the Interborough would construct these new routes and the third track to the elevated railroads.

Q. Did you receive a retainer when you started your work? A. Shortly thereafter.

Q. How much was that? A. Ten thousand dollars.

Q. Did you render an additional bill? A. I did.

Q. How much was that? A. Fifteen thousand dollars.

Q. That makes twenty-five thousand dollars? A. Yes, sir.

Q. For the two months' work? A. Yes, sir, and it was well worth it.

Senator Thompson.— You talk just like Mr. Headley. A. I don't care whether I talk like Mr. Headley or not. I am talking for myself. Considering the vast interests involved and the result obtained it was well worth it, according to the way in which lawyers' fees are recognized by the court.

Q. (By Mr. Moss.) Did you have any controversy with any of the persons connected with the interests that you represented? A. Mr. Shonts objected to the amount of my bill, the second bill.

Q. And that was reduced how much? A. It was settled for half, seventy-five hundred.

Q. So that the amount that was passed you was how much, the total amount? A. Seventeen thousand five hundred dollars.

Q. Now for the seventeen thousand five hundred dollars, which you received on a bill of twenty-five thousand, will you tell more in detail what you did? A. I have told you the whole story.

Senator Thompson.— Seventeen thousand five hundred dollars is the salary of the Supreme Court Justice here for one year. A. That may be, and it is a good many times the salary of a State Senator, but that hasn't anything to do with it.

Senator Thompson.— We earn our money. A. I earned that money, too.

Q. (By Mr. Moss.) What did you accomplish, Mr. Grout? A. The forming of a plan by which the Interborough was to get a preferential payment on the capital which it invested and had invested of nine per cent. and that went through substantially in that form, it was reduced from nine per cent. to eight and seventy-six one hundredths.

Q. Did you form that plan? A. I aided.

Q. Who did formulate it? A. I do not know.

Q. You found it formulated, didn't you? A. No.

Q. How did you aid? A. I aided in the negotiations.

Q. You said you had formulated the plan. A. I didn't say I had formulated it.

Q. You said you aided? A. Yes.

Q. How did you aid in formulating it? A. Representing the Interborough in these conferences which were extended day after day and night after night with a dozen or fourteen people present when things were discussed.

Q. Didn't you find the plan formulated? A. I did not. There was a suggestion made at first of eight per cent. and then we came back with a proposition of nine.

Q. Will you describe the plan which you say you aided in formulating? A. The plan was that the Interborough was to put in an additional sum of money, I think, seventy-five or seventy-eight millions of dollars in addition to what it already had and that out of the proceeds of the operation of the entire system, old and new, it was to be entitled to a preferential dividend of nine per cent. first, before the city should get it.

Q. Who was the first person that proposed that? A. That I do not know.

Q. You found that already proposed, didn't you? A. I did not find it already proposed.

Q. Who proposed it? A. I can tell you who suggested to me the proposition of eight per cent. It was suggested to me by Mr. Willcox and Mr. McAneny, and how they arrived at it, I don't know. As a matter of fact it was putting it into a form of percentage a preferential which the Interborough was seeking to get a gross sum of money.

Q. What was the nine per cent. on? A. On the investment that the Interborough had in the system.

Q. Do you recall approximately how much that was? A. Oh, it was all told—it must have been over a hundred million. I haven't looked at that paper for years, Mr. Moss, five years or more.

Q. Was that plan actually adopted in the contract? A. In substance.

Q. With the variation down to 8.76? A. Yes.

Q. You say that somebody mentioned nine per cent. and then somebody mentioned eight per cent. Now these were other persons mentioning to you, how did you assist in formulating that plan? A. I didn't say what you say I said at all. I said at this conference with Mr. McAneny and Mr. Willcox, a preferential dividend of eight per cent. was proposed as a basis for further negotiations. Then, we took it up at the Interborough and figured upon it for several days and came back with a proposition of nine per cent.

Q. That is a negotiation as to the amount of a thing, but not the formulating of a plan. A. If that doesn't suit you, I am afraid I can't. I have told you what happened.

Q. You said you had formulated a plan or aided in formulating a plan, have you told us all that you did either in formulating and aiding? A. I have told you all that I can recall. Here were these conferences for days and days and nights and nights and that plan was the result of it. I was there representing the Interborough in that matter. What was said by one and what was said by another, no man can now recall.

Q. Those were conferences as to the amount, but not conferences in forming a plan. A. Yes, it was.

Q. All right if you think so. By that preferential, do you mean the six million dollars which was allowed as their income on their investment? A. I mean just what I say, they were to have a preferential of nine per cent. under the plan then talked of on the entire investment which they had or would have in the subway system, that is the way I recall it.

Mr. Quackenbush.—He is talking about the conditions of 1911 and you are thinking of 1912, which he didn't have anything to do with.

Mr. Moss.— Was there any final agreement that resulted from your negotiations? A. Not at that time, my negotiations contributed their work to the final agreement which was executed the next year.

Q. You mean in 1913, Mr. Grout? A. No, I think it was 1912. Am I not right about the date?

Mr. Quackenbush.— The contract was actually signed March 19, 1913, but what I think Mr. Grout refers to is that the minds of the parties met on the substantial essentials in 1912. A. That is what I have in mind.

Senator Thompson.— I would like to see the items of your bill, Mr. Grout. Can you get them for us? A. I never made any itemized bill.

Q. Didn't you keep an office record? A. Yes, I kept an office rceord.

Q. When you go to a conference for a man don't you make a memorandum of it? A. Certainly.

Q. You have got those memoranda? A. Certainly.

Q. I would like to see them. A. Certainly.

Q. How long would it take? A. I would have to go to my office and get them.

Q. How far is that? A. 115 Broadway.

Q. We will wait for you.

(Mr. Grout goes for papers and returns.)

Q. Mr. Grout, I see that this record comes from your office register? A. It does.

Q. And there are two pages of interest, showing considerable work and many interviews. I think I would like to go over them, 1911, June 16. A. That date is misplaced. The entry clerk we had at that time probably made a good many errors. You will find names misspelled.

Q. June 12, 1911, phone from Mr. Shonts' secretary, E. M. G. That means a phone to you? A. That means that I made the entry on the slip and then the entry clerk transcribed it into the register.

Q. Then, June 13, interview with Shonts in the matter of re-

tainer? A. That I preferred to wait report of committee due to-day.

Q. Well, we have been over that. Fourteenth, conferring with Shonts after examining report of subway committee and retained. June 15, conference with Mr. Gaynor over one hour. That is the auditor is it? A. I don't know.

Q. An employee of the railroad? A. It may have been the Mayor, I can't say. There is nothing there to indicate and I have no recollection.

Q. Well, this was G. originally, when did you write in in pencil the word Gaynor? A. I went over that when I had my dispute with Mr. Shonts, and it looked as if I would have to go into a law suit about my bill, and I made corrections in the spelling of names and I made some corrections from memory of entries. The entries are not complete by any means. I know, Mr. Moss, that during the six weeks or so that I was on that matter I did nothing else, no other business whatsoever.

Senator Thompson.—Originally you put the Mr. G.? A. There was nobody with a G. in the matter except the two Gaynors. Which Gaynor it was, I don't know. I saw the Mayor frequently, I saw the auditor frequently.

Mr. Moss.—June 16, consultation one hour with Pepperman, Shonts' secretary, also one hour with Freedman and Pepperman 'phoned. Do you remember where you saw Mr. Freedman? A. I do not.

Q. Do you remember what you talked about? A. He came to my office several times and I saw him often at the Interborough offices.

Q. Had you ever done any business for Mr. Freedman before this? A. No.

Q. Did you ever have any business relations with him before this? A. Oh, I think there had been matters in which he was interested on the other side. I had never done any business for him.

Q. Did you have any business interests with him? Any Corporate interests, stock interests or anything with Mr. Freedman? A. No.

Q. Then comes June 20, consultation with Shonts and Rogers. Rogers called here for one hour's consultation. Then June 21, consultation with Freedman. June 22, consultation with Shonts, with Gaynor, with McAneny, with Shonts. Who was Gaynor? A. I couldn't tell you that from memory. It probably was with the auditor because I didn't go with Mr. Shonts to see the Mayor at any time.

Q. Well, this doesn't necessarily show it, consultation with Shonts, with Gaynor, with McAneny, with Shonts.

Senator Thompson.—Did you take the auditor with you to see Mr. McAneny? A. He did go with us. He did it constantly.

Q. (By Mr. Moss.) He was the only man who could talk on the statistics of the company. The next day, June 23, 'phoned Adamson, also Pepperman. Who is Adamson? A. Adamson was the Mayor's secretary.

Q. If you 'phoned Mayor Gaynor's secretary on the 23d, isn't it probable that the consultation with Gaynor on the 22d was Mayor Gaynor? A. I don't know. I am not going to testify to probabilities.

Q. What did you 'phone Adamson about? A. I don't remember.

Q. Do you remember how many times you 'phoned Adamson? A. No.

Q. Isn't it probable that on the 22d you consulted with Shonts, which made it advisable for you to see Gaynor, and after conferring with Gaynor, you found it advisable to see McAneny, and then after you had seen them all, you returned to Shonts? A. I don't know anything about the probabilities, Mr. Moss.

Q. When I speak that way, I am trying to refresh your recollection. A. That doesn't refresh my recollection at all, that may have been and may not have been.

Q. This series begins with Shonts and ends with Shonts, but in the meantime it takes up Gaynor and McAneny. Don't you think it was a cycle? A. No, not necessarily.

Q. Don't you think the 'phoning to Adamson was for the purpose of making an appointment or sending some message to the Mayor? A. I don't know whether it was or not.

Q. Well, on this same day, June 23, appears consultation with

Shonts and Martin. Who was Martin? A. Martin, the bridge commissioner.

Q. He was the representative of the Mayor, wasn't he? A. He was. The Mayor was not on the committee.

Q. Of course not, but in talking with Martin, you were practically talking with the Mayor's representative weren't you? A. With the representative to a limited extent.

Q. But that was the only relation he had to this matter? A. But he wasn't the Mayor by any means, the Mayor talked for himself.

Q. Surely. June 26, 'phoned Pepperman that I was at Mr. Shonts' disposal, waited at office 4:30 to 5:30. That means probably that you didn't see him? A. I don't know. There is the entry.

Senator Thompson.— Have you got any recollection about that? A. No.

Q. Don't you recollect what you waited there an hour for? A. How could I?

Q. I don't know. A. Neither could anybody else.

Q. June 24, saw Pepperman, June 27, saw Shonts and Freedman, saw Gaynor twice reported to Pepperman? A. That was undoubtedly the Mayor, because the record would have indicated that.

Q. There upon that day you had a talk with Shonts and Freedman and you have connected them with the conjunction, and, then follows seeing Mr. Gaynor twice, does that refresh your recollection what you saw him for? A. Only to this extent that during that whole period we were trying to find some basis on which the negotiations could be reopened and we hadn't yet found it.

Q. The Mayor was not a member of this committee? A. No.

Q. What was the reason for seeing him? A. Because he was the Mayor, he was a member of the Board of Estimate, the committee were not supreme.

Q. Were you trying to convert him to your position? A. We had no position at that time. I was trying to find a basis on which negotoations could be reopened.

Q. Did you find him friendly to the reopening of negotiations? A. He desired to have both the companies construct subways, he desired to have the Interborough furnish money for its part and he desired to have the present Interborough completed, complete with the H. Everybody desired that and the only question was of terms. We tried to find a basis on which we could negotiate that would be mutually satisfactory.

Q. I overlooked this, Reported to Pepperman. Are there any written reports connected with this matter? A. No.

Q. Have you any documents? A. I don't think so. I don't know of any.

Q. Were there any papers written? A. There is a reference there some where to a plan of something or other, but I have no copy of it.

Q. I will come back to that when we have finished the account. A. I have no papers that throw any light upon it. The whole thing was done by personal communication.

Q. You didn't draw up any statements, any propositions, any plans? A. There is a reference later on to drawing up some plan.

Q. I guess you better wait till I finish this account. The 28th, Consultation with Shonts, Freedman and Rogers, 'phoned Low last night. That is ex-Mayor Low, undoubtedly? A. Yes.

Q. On the 30th, consulted two hours with Low, Shonts, Berwind, Freedman, Gaynor, Headley, Nicoll and Rogers. Do you remember where that conference was? A. That was at the Interborough office and with Auditor Gaynor.

Q. June 30, or July 1? A. That is an entry I made from memory afterwards.

Q. Will you kindly read that? A. I can tell you what it is. I met Mr. Prendergast at the funeral of Mr. Abraham Abrams and in coming away in the same conveyance made a suggestion to me as to the basis of opening the negotiations, as to what it was I don't recall.

Q. What had Mr. Prendergast's attitude been up to that time? A. I don't recall anything definite. As I remember when I took the matter up, the Board of Estimate generally were in an agreement on the McAneny report.

Q. Including Mr. Prendergast? A. My recollection is that

Q. You have no recollection at all of what the suggestion was that was the general attitude including Mr. Prendergast, and the Interborough was in absolute disagreement.
that he made there? A. I can't recall what the suggestion was. I think the substance of it was that we had better get Shonts and McAneny and Willcox talking things over again.

Q. July 1, Consultation with Rogers, Pepperman, Martin and McDougal. Who was McDougal? A. McDougal was a real estate operator in Queens, who was very anxious to get the extension which runs out to the northern part of Corona.

Q. July 3, Consultation with Martin, 'phone from McAneny. Do you remember what that was about? A. Why, no.

Q. July 5, Consultation Shonts, Freedman, Headley, Gaynor, Pepperman, Martin and Low, all the forenoon. A. Isn't there another entry that day?

Q. Following it? A. That is the day when I persuaded Mr. Shonts to let me make the appointment with Mr. McAneny.

Q. Now the same day, conference all afternoon with McAneny, Willcox, Low, Martin, Shonts and Freedman. With them altogether? A. Yes.

Q. Where? A. At Mr. McAneny's office. I telephoned to Mr. Shonts' office late in the forenoon and made the appointment and then after luncheon we all went up to Mr. McAneny's office and he sent for Mr. Willcox, or had already sent for him and we were in conference all the afternoon.

Q. July 6, 'phone with Martin, McAneny and Shonts. A. One thing that happened at that time I remember distinctly, Mr. Shonts said to Mr. Willcox, " why go ahead with the city money then and build it all and then we can make terms easily," and Mr. Willcox said, " well, that is impossible, we have got to have private capital."

Q. Who said that? A. He said, " we have got to have private capital from the Interborough, the city has not got the funds for all this construction."

Q. Well, Willcox stood pretty strong for the Interborough using its own money? A. Everybody did. It was inevitable. Here was the difficulty, Mr. Moss, the city was insisting on the immediate construction, within the next five years of a lot of subways which, to my mind, ought to have been spread over twenty-five years. The city didn't have the money to do it with and the city

had to get private capital from the Interborough. Now that private capital was not going in unless it was assured of repayment and of its income. The whole negotiation turned on those questions.

Q. On the same day consultation with Shonts two and a half hours, drafted proposition and sent copies with letters to McAneny and Willcox. Have you that proposition? A. I have not. I have looked for that and I can't find it. I don't recall now what it was.

Q. Well it was sent to McAneny and Willcox, perhaps it will turn up in their papers, Mr. Chairman. You sent it to them? A. That is the entry and undoubtedly so.

Q. Was that proposition the result of the interview the day before? A. I presume it was the result of that plus some consideration that we had given it. It is something that disappeared from memory, because it was only a step in the negotiation.

Q. Well, the 'phone that you had before you sent out this proposition was with Martin, McAneny and Shonts. There is a combination of Martin, Mayor Gaynor's representative, McAneny and Shonts. Do you remember what that 'phone was? A. I do not.

Q. What relation did it have to the proposition? A. How could anybody remember such a thing?

Q. I don't know. It might be very difficult and yet I am going to ask you these questions because you may happen to remember them. A. If there is any fact that occurs to me, I will state it.

Senator Thompson.— Were these conferences that you had with these officers in their official capacity, or were they confidential? A. In their official capacity.

Q. So that if you wrote any letters or propositions to them, they were official documents? A. I don't know how they treated them. They were written to them at their offices, and they were addressed to them in their official capacity.

Q. Consequently, they would be official documents? A. I suppose so, and yet I don't know that they necessarily would.

Q. (By Mr. Moss) July 6, received from Martin report of ten-cent fare proceedings, wrote McAneny and Willcox relative to ele-

vated railroad values given therein. Have you that letter? A. I have not.

Q. Have you looked for it? A. I don't know that I will. Do you mean to make a search through my letter book to find it? It doesn't concern this thing at all. I am not at your command to find time for hunting for old things like that.

Q. I have no command to you. I only asked you if you would. A. Well, I won't. It has no relation to this thing and its substance is sufficiently stated in that entry.

Q. What is the use of getting so many words in this? I asked you a polite question. A. I don't think so.

Q. I simply asked you if you would. Why do you talk so much about this? A. I said it has nothing to do with this committee, and I won't do it. Go on with your next question.

Q. Don't tell me to go on with your next question. Just stop a moment and get your composure, Mr. Grout. A. I am not losing my composure.

Q. Why it is a simple little question. A. It is an impertinence.

Senator Thompson.— It is not an impertinence. A. I think it is.

Q. You can express yourself after you get off the stand on that. You are here as a witness and you are to answer the questions, and if some question don't seem proper to you, why you appeal to the chair and we will try to take care of it. A. I appeal to the chair. I won't answer this question.

Senator Thompson.— We won't permit to volunteer these things. A. Go ahead with your examination.

Senator Thompson.— Don't you lecture the lawyer either.

Q. (By Mr. Moss) I asked you this, Mr. Grout, because this is a letter to two public officials, McAneny and Willcox, relative to elevated railroad values and a part of the particulars of the services which you rendered a bill for and, what I am asking you and what I want you to answer is, have you a copy of that letter? A. There may be in my letter books.

Q. Are you willing to look for it and let us have it if you find it? (Marked Exhibit No. 1.) A. Don't mark that.

Senator Thompson.— I am going to put it in evidence. I object to it being marked. You have no right to mark my papers.

Q. (By Mr. Moss) What is your answer to my question? A. I didn't hear you.

Q. I will put it again. Are you willing to look in your letter book and see if you can find that letter which you wrote to McAneny and Willcox, relative to elevated railroad values on July 6, 1911? A. I told you already I will not because it has no relation to that matter whatsoever.

Q. You clouded that in so many words that I didn't know that I understood you. Next item is July 6. Wrote McAneny and Willcox, calling their attention to proceedings re Coney Island ten-cent fare in March, 1910. Do you know whether you have a copy of that letter? A. I presume so, I don't know.

Q. Are you willing to look and see if you have? A. I don't see that that has any bearing —

Q. Are you willing to do it? A. I don't see that it has any bearing —

Q. Will you look? A. I don't think I will.

Q. Hasn't it any thing to do with this matter? A. No.

Senator Thompson.— Then, why did you charge the Interborough for doing it? A. I didn't. It happened to be entered in there because it has something to do in connection with this thing.

Q. (By Mr. Moss) It is the details which you have gone willingly and furnished us voluntarily as the basis for the charge which you made, and I want to know, Mr. Grout, whether there is any reason which you are not willing to state why you will not produce those copies? A. There is no reason except that they have no bearing on this thing whatsoever.

Q. How do we know that? A. Then I will look for them and get them if you put it that way. If you make any imputation of that sort, I will look for them.

Q. There is no imputation, but this is an investigation. A. Yes, I know.

Q. And it is only for that reason. If there is nothing interesting in it, why no harm is done. A. My only reason to say that I wouldn't look was because I thought it was useless trouble, but if

you suggest there is any reason for not wanting to do it other than that, I will find it.

Q. Would it be very much trouble to look for those letter books of July, 1911? A. It will be a great deal of trouble, but I will do it.

Q. July 7. All day on matter, conferences with Martin, McDougal, Mitchel, Shonts, Gaynor, Mitchel's accountants, Low, McAneny, Willcox, Headley and Pepperman. Proposition of eight per cent. preferential made. A. That is a pencil memorandum added from memory later on, and I am not absolutely sure of that date. I think that is the date, because I think I looked it up on the calendar to see whether that fell on a Friday.

Q. Was the Gaynor in this instance, Mayor Gaynor? A. Let me see that. I think not.

Q. July 7. Wrote editor of Brooklyn Eagle re retainer. Will you explain that? A. Why there was some misstatement of fact of some sort in the paper that I wrote to correct. Like the other letters it has nothing to do with the case.

Q. July 10. Conferences all day. In forenoon, Mr. Shonts, Berwind, Freedman, Quackenbush, Gaynor, Low. Saw Mayor Gaynor, then Shonts, Berwind, Quackenbush. In afternoon, Willcox, McAneny, Low, Shonts, Gaynor, Davison. Is the Gaynor in all these instances, Mayor Gaynor? A. I think not.

Q. Only in the one? A. Only in the one where he is named as Mayor.

Q. Do you remember where you saw Mayor Gaynor on that date? A. I went to his office, undoubtedly.

Q. Was Mr. Shonts there? A. I had no interview with Mr. Gaynor when Mr. Shonts was present.

Q. July 11. Conference in morning, Public Service Commission and Board of Estimate Committee. A. That refers to McAneny, Cromwell and Miller.

Q. Morgan, Davison, Shonts, Gaynor and Low, later were Shonts, Headley, Quackenbush. In afternoon saw Pepperman and Berwind and others. The same day, Conference all evening at Metropolitan Club and Willcox's house with Public Service Commission, Board of Estimate Committee, Interborough and Morgan people and Low. These were all together at the Metropolitan Club

with them? A. Yes. At those conferences there were twelve or fifteen people there.

Q. July 12, in conference all day. Mayor Gaynor, Mitchel, Shonts, Freedman, McDougal, phone with Low. Thirteenth, saw Mayor Gaynor, phones with Shonts and Pepperman, conference with McDougal. Fourteenth, phoned with McDougal and Shonts, conference Shonts, Freedman, Quackenbush, long consultation, Shonts, Freedman, Mitchel. Does that mean that Mitchel was with Shonts and Freedman? A. Mr. Shonts and Mr. Freedman and I went to Mr. Mitchel's law office and had a conference over this matter.

Q. Sixteenth, in conference 8:30 to 12:00 P. M., Board of Estimate Committee, Public Service Committee, Shonts, Gaynor, Freedman and Low. Seventeenth, saw Mayor Gaynor and Gresser. Phone from Shonts. Saw Headley, Quackenbush and Pepperman. Who was Gresser? A. He was president of the Borough of Queens and a member of the Board of Estimate.

Q. On the same day, the 17th, saw Mayor Gaynor, conference with Shonts, Freedman and McDougal, then with Low and Morgan, Davison, Shonts, Freedman and Mayor. Do you remember where that was? A. Let me see, that — I undoubtedly went to the Mayor's office to see him. He was not present at any of these conferences.

Q. The third entry on the 17th, conference 5:30 to 7:30, Metropolitan Club. Board of Estimate consultation, Mitchel, Prendergast, Low, Morgan, Davison, Shonts, Freedman and Gaynor. A. That is Gaynor, the Auditor.

Q. Eighteenth, conference with Shonts and Freedman, one hour at Mayor's office. Attended meeting Board of Directors, then worked with Shonts and committee and counsel until 1 A. M. A. Does that say I had a conference with Shonts and Freedman at the Mayor's office?

Q. It seems so. A. My recollection is that I never saw the three of them together. That is not correctly written.

Q. Will you give it to us as you think it ought to be? A. Well, I don't know, I am sure. I didn't go with Shonts and Freedman to the Mayor's office. I am sure of that.

Q. Nineteenth, consultation with Shonts, attended meeting

Board of Directors, then with Shonts and Quackenbush at Public Service Commission and Committee of Board of Estimate, saw Mayor Gaynor, phoned Gresser, consultation with Shonts, new offer submitted. Have you any copy of that offer, Mr. Grout? A. It is in the Board of Estimate records, of course. I haven't any copy of it.

Senator Thompson.— Who was Gresser? A. President of the Borough of Queens.

Q. What did you phone him about? A. I couldn't tell you, any more than I can tell you what I saw any one of them about. It was about this general proposition.

Q. (By Mr. Moss) Do you know who submitted this offer that is mentioned in the entry of the 19th of July? A. I presume it was submitted by the representatives of the Interborough.

Q. Why have you it in your entries? A. Because one of the representatives of the Interborough was at these conferences.

Q. Did you submit it? A. I couldn't tell you whether I personally handed it over or not.

Q. Twentieth, saw Mayor Gaynor, attended Board of Estimate meeting, proposition defeated. What proposition was that? A. That was the proposition for the nine per cent. preferential.

Q. Then that will appear in the minutes of the Board of Estimate? A. Yes, Mayor Gaynor refused ot vote for it, or consider it at any time while I had anything to do with the matter. He only came around to it later on, the next winter.

Senator Thompson.— Somebody else refused to vote for it. A. Mr. Prendergast changed his mind over night. I say changed his mind. He had indicated that he was favorable to it, and then when he came to the voting, he voted against it.

Q. (By Mr. Moss.) Did he ever tell you why he did that? A. Nothing except his public statements.

Q. Of course, we can get that just as well as you, but you never had any consultation or talk with him? A. Not after the conference where there were a dozen or fifteen of us together uptown, when it was agreed to. Mr. Gresser votd against it, because Mr. Gresser was voting the way the Mayor was.

Q. Twenty-first, phone with Shonts, 24th, conference with

Freedman and Nicoll, and that ends this statement. Now at the ending of this statement, Mr. Grout, it appears that the proposition which was submitted had been defeated, and that is the end of the account. Did you consider that the work for which you were engaged had been accomplished? A. I did not. I wanted to see what the final result of the thing was. I felt confident that that proposition could eventually go through. I could see no other possible way in which the city could obtain what it wanted in the way of construction of additional subways by private capital except by substantially this arrangement, and I felt that it would gravitate its way through and it did eventually by the efforts of the Pennsylvania Railroad.

Q. Did Mayor Gaynor know that you were retained by the Interborough Rapid Transit Company? A. Certainly, they all knew it.

Q. Did Mr. Prendergast, Mr. Mitchel? A. Certainly, they knew it.

Q. After these proceedings terminated, which appear upon your record just read in the evidence, did you meet Mr. Mitchel and talk subway matters with him? A. I don't think so.

Q. Did you meet Mr. Prendergast and talk of subway matters? A. I don't recall it.

Q. Did you meet Mayor Gaynor and talk subway matters after this date? A. I may have, I don't recall. I kept no further entries of the matter after that.

Q. While you are looking for those two letters, Mr. Grout, are you willing to make your examination cover the whole of June and July and see if there is anything there? A. I will look and see any letter that is there.

Q. And any documents that relate to the matter? A. I don't think there is any document.

Q. Well, if you find anything, Mr. Grout,— A. If I find anything, you are entitled and welcome to it all.

Q. Did you see any official in reference to your employment before you were employed? A. No, sir.

Q. Did you talk with any of them? A. No, sir.

Q. You say you don't remember any of these conversations you had with these gentlemen that you mentioned in your book?

A. I don't remember a particular conversation, I remember the general subject of conversation, and the discussion of the general terms.

Q. You can't remember any particular conversation at all? A. Not further than I have stated. The conversations sometimes lasted four or five hours and can hardly be recalled.

Q. Did you expect this matter to go through on the 20th of July when you took it up? A. Not on the 20th, on the 19th we expected it to go through, but on the 20th we didn't because Mr. Prendergast and Mr. Gaynor had both announced publicly their opposition to it that morning.

Q. On the 19th you expected it? A. On the 19th we expected that Mr. Prendergast would vote for it.

Q. What was the date that you telephoned to Mr. Gresser? A. I telephoned him twice just before that.

Q. Did he tell you that he would vote for it? A. Mr. Gresser told me he was going to vote the way the Mayor voted.

Q. And you were interested in how they voted? A. We were anxious to get this through if we could.

Q. You knew that it took twelve votes to put it over? A. It did not.

Q. How many did it take? A. Nine.

Q. You thought nine was enough? A. There is no question about it. The Charter provides that a majority of votes will take the thing through the Board of Estimate. The rule of the Board of Estimate is that when a matter comes up for the first time it requires twelve votes.

Q. You think that nine votes would have been sufficient? A. That was my understanding of it.

Q. Then why did you care how Mr. Gresser voted? A. Because we wanted all the votes we could get. We never knew until the vote was taken how anybody would vote except Mr. McAneny, Mr. Cromwell and Mr. Mitchel.

Q. You say the Interborough required only nine? A. Is there anything about twelve? Senator, that is the law as to matters in the Board of Estimate generally, unless there was some special provision.

Q. Did you look into that during this service? A. No.

Q. Didn't look into it? A. No, we wanted to carry it.

Q. Well, if you wanted to carry it, you would become satisfied as to how many votes it took. A. That question never came up as to whether there were nine or twelve required.

Q. (By Mr. Moss.) In the letter of Mr. Rogers, which is attached to your final bill, or final receipt, occurs a sentence which I want you to tell me about. The letter says :

"November 23, 1912.

"Dear Sir :

"At various times Mr. Edward M. Grout has presented a bill for professional services rendered the Interborough Company in the amount of fifteen thousand, being alleged to be a balance due him in addition to a ten thousand dollar retainer which was paid him on July 6, 1911. I have been indirectly treating with Mr. Grout for a reconsideration of this bill and finally have through a third party, arranged to compromise the matter by paying him seventy-five hundred dollars to be in full for all his services to date."

Can you tell us who was the third party? A. Yes, Morgan J. O'Brien. When Mr. Shonts raised a question about it I put it in Mr. O'Brien's hands and he took it up with Mr. Shonts directly, and also, I suppose, with Mr. Rogers.

(Exhibit No. 1, consisting of two sheets, returned to the witness.)

Mr. Grout.—If I find those letters, I will send you copies of them. They are of no importance.

Mr. Moss.—I don't suppose they are, but I think we should have them.

Senator Thompson.—If there is no objection, we will suspend until next week Friday, that is the 7th of April at 11:00 o'clock.

APRIL 17, 1916

CORONER'S COURT ROOM, MUNICIPAL BUILDING,

The Committee met pursuant to adjournment, Assemblyman Aaron Feinberg in the chair. The Committee, on the request of Senator George F. Thompson, Chairman, adjourned until Saturday, April 8, 1916, to meet in this same place.

The Committee was called to order by Mr. Feinberg, Acting Chairman.

Mr. Moss.— Mr. Chairman, I have had a message from Senator Thompson, saying he has been delayed and will be here later, but we wish to start now.

Is Mr. Eadie here?

Mr. Eadie comes forward and is sworn.

Mr. Moss.— Mr. Eadie, are you a lawyer with an office at 27 Cedar Street?

Mr. Eadie.— Yes, sir.

Q. And you are counsel for the Flushing Association? A. Yes, sir.

Q. What is the object of that Association? A. Its object is to make Flushing a better place to live in. It performs civic functions for Flushing.

Q. And it has paid some attention to transportation, hasn't it? A. Yes, sir.

Q. Particularly with reference to the New York and Queens County Railway Company? A. Yes, sir.

Q. How are the people of Flushing interested in the operation of that railway? A. A great many of them use the lines of that railway daily, going and coming out from Manhattan.

Q. Can you tell us in a few words the general route of that railway, what places it connects? A. The Flushing people use it from Flushing to 59th Street and Second Avenue, Manhattan, and also from Flushing to Jamaica.

Q. And are there other towns or places on it of importance be-

sides Flushing and Jamaica? A. Yes, sir, it goes through Corona, Elmhurst, and Woodside.

Q. How long has the Association been investigating the railway conditions? A. Well, the principal investigation took place last year before I became counsel.

Q. I wish to put on the record, Mr. Chairman, the names of the officers of the Association. A. Samuel D. Jones, President, George W. Benton, First Vice President, Burdette Phillips, Second Vice President, Daniel A. Weigt, Third Vice President, Harry H. Murphy, Treasurer, Gardner L. Van Dusen, Corresponding Secretary, Leon S. Chase, Recording Secretary, James S. Eadie, Counsel.

Q. Does this society have within it some of the leading business and prominent people of Flushing? A. Yes, sir.

Q. Represents Flushing, does it? A. Yes, sir.

Q. I would like to read into evidence, Mr. Chairman, the letter which was received March 2, 1916, which brings this matter to our attention.

The Flushing Association.

"Flushing, New York,

"March 2d, 1916.

"Hon. George F. Thompson,
"Chairman of Legislative Committee to
"Investigate Public Service Commission,
"165 Broadway, New York City.

"Dear Sir:

"About a year ago the Flushing Association, through its counsel, John Holley Clark, Jr., made a careful investigation of the management of the New York & Queens County Railway Company. As a result of this investigation it was found that the Interborough Rapid Transit Company owned a vast majority, in fact, practically all, of the stock of the New York & Queens County Railway Company; that the Interborough Rapid Transit Company, through its control, forced the New York & Queens County Railway Company to close its (the New York & Queens County Railway's) power station and purchase power at an exorbitant rate from the Interborough Rapid Transit Company; That the Interborough

Rapid Transit Company, through its control, forced the New York & Queens County Railway Company to purchase from the Interborough Rapid Transit Company 50 steel cars which, because of their size and weight, injured the tracks of the New York & Queens County Railway Company and required much more power for their operation than was ordinarily used by the cars of normal size. In short, this investigation proved that the deficit as shown on the books of the New York & Queens County Railway Company for the past few years is and has been one manufactured through the milking by the Interborough Rapid Transit Company and that, had the New York & Queens County Railway Company been permitted to purchase power and cars at a reasonable rate, it would have today a surplus of considerable size instead of its manufactured deficit.

"At the last meeting of the Flushing Association I was instructed to forward to you the information briefly outlined above, discovered and compiled by John Holley Clark, Jr., Will you kindly examine the enclosed information very carefully so that you may appreciate its value and relevancy to your investigation and will you not examine those men who are concerned in the mismanagement of the New York & Queens County Railway Company so that the Public Service Commission and the public at large may know the truth as it exists and may assist the Flushing Association in obtaining the much needed relief from the grossly inadequate service afforded to us at present by the New York & Queens County Railway Company.

"Please note that the exorbitant charge for power made to the New York & Queens County Railway Company by the Interborough Rapid Transit Company and mentioned by me above is included in the statement of income of the Interborough Rapid Transit Company for the years 1910-11 on which incomes is based the preferential of the Interborough Rapid Transit Company in connection with its contracts with the City of New York.

"Some of the statistics in the enclosure marked 'C' are missing but I send you this enclosure, nevertheless, as the

omissions are relatively unimportant and the statement itself contains important data and references by means of which these data can be verified.

"Kindly acknowledge the receipt of this letter and its enclosures.

"Very truly yours,

("Signed) "James S. Eadie, Counsel."

Did you have anything to do, Mr. Eadie, with the preparation of the data that you furnished with this letter? A. No, sir.

Q. The data I have, which is referred to in the letter, were prepared by Mr. Clark? A. Yes, sir.

Q. And this matter that you have referred to here, of inadequate service, you do know of that personally? A. Yes, sir.

Q. Will you please describe that in a few words? A. During the rush hours of the morning and evening, the cars from 59th Street and Second Avenue to Flushing are so over-crowded that it is sometimes impossible to get on cars, and during the rush hours it is almost always impossible for all those who are in the cars to obtain seats. In fact, during the rush hours the cars are very crowded.

Q. And how about the frequency of the cars? Are enough cars supplied? A. No. The over-crowding is largely due to the fact that the number of cars is too few.

Q. What is their headway during the rush hours — about how many minutes apart are they? A. I am not familiar enough with the conditions to know.

Q. Have you noticed anything or learned anything with regard to accidents on that railroad — the frequency of accidents? A. Only through reading the data compiled by Mr. Clark.

Q. Did you have any conversation with Mr. Clark about this communication which you sent to us? A. Yes, sir.

Q. When was that conversation had? A. Directly after the meeting of the Flushing Association at which I was directed to prepare the data.

Q. So that the matter was fresh in mind between you and him before you sent it to us? A. Yes, sir.

Q. I will ask you to remain in the room for a few minutes, Mr. Eadie. Mr. Weber?

MR. A. F. WEBER comes to the witness stand and is sworn.

Mr. Moss.— Mr. Weber, you are Chief Statistician of the Public Service Commission, are you not?

Mr. Weber.— Yes, sir.

Q. Did you last year prepare a report on the New York & Queens County Railway Company? A. I did.

Q. Have you it with you? If you have, please produce it. A. This is the original report that was introduced in evidence in the proceedings in Case 1848.

Q. What was the nature of that case? A. That was an investigation as to the service of the equipment of the New York & Queens County Railway Company.

Q. Has that case been finished? A. I don't know.

Q. Was that case based on the complaint that the service was inadequate? A. I am not familiar with the complaint, Mr. Moss. I was merely asked to prepare an analysis or report upon the financial condition of the company, and I haven't followed the case.

The Chairman.— What department of your Commission has charge of statistics relevant to the operations? A. The Bureau of Statistics and Counts.

Q. Are you connected with that Bureau? A. I am the head of the Bureau.

Q. But who under you would know the method of operations? A. The financial reports of this company and of all companies are filed in the Bureau of Statistics and Counts, of which I am the head. Then, of course, the Commission has a Transportation Department, which has to do with inspections and observations of traffic, and they collate data as to traffic conditions.

Q. But who is the person that we would have to bring to this Committee to give us the testimony about how they operate cars and the number of cars? A. Mr. Joseph Johnson, the Chief of the Bureau of Transit Inspection, would be more familiar with the actual operating conditions.

Mr. Moss.— Did you have any conversation with Mr. Hollev

Clark, or were your statistics based upon your own investigation? A. Absolutely.

Q. So that your source of information is independent of his? A. Entirely.

Q. Mr. Chairman, this is a very interesting report, as I have glanced over it, and I want to read in evidence the first two and a half pages of it, which will be enough for the purpose of record.

"FINANCIAL CONDITION OF NEW YORK & QUEENS COUNTY RAILWAY COMPANY.

"On June 30, 1914, the Interborough Rapid Transit Company owned $3,204,800 par value of the $3,235,000 outstanding capital stock of the New York & Queens County Railway Company. Stock control was acquired by the Interborough as of December 29, 1903. The following table gives the operating results in the last fiscal year as compared with the year preceding Interborough control.

"In the eleven years of Interborough control, traffic and revenue have doubled, but operating expenses have increased three-fold in face of the fact that car operation, or service as measured by the car mileage, has increased only 1.86 times. The heaviest increases in expenses are seen to be those incurred for maintenance, but even the direct cost of car operation has increased 2.61 times.

"In order to ascertain the causes of this change, a series of schedules have been compiled from the annual reports by George W. Shipway, C. P. A., of the Bureau of Statistics and Accounts, giving the detailed figures as to property accounts and operating accounts for the entire period. From an analysis of these figures and the two diagrams (A and B) based on them, the following conclusions may be drawn:

"1. Expenses since 1906 have been abnormally high, having increased from 60 per cent. to 85 per cent. of the revenue and from about 14 to 18 cents or more per car mile.

"2. The principal causes of such increase in expenses are deferred maintenance —"

May I ask what that means? A. It is maintenance that has

been delayed or accumulated. It comes in one or two years or in a short period instead of being taken care of normally from year to year.

Q. I will continue:

"2. The principal causes of such increase in expenses are deferred maintenance and over charges for power, etc., furnished by the controlling company.

"3. The expenditures for maintenance prior to 1903 were small and probably inadequate. In any event, the property when acquired by the Interborough was certain to require heavy deferred replacements in the near future and as no fund had been accumulated to make such replacements, the so-called surplus in 1903 was fictitious. The purchaser of the property assumed the liability to make these replacements, which are properly chargeable against accumulated surplus and not against current revenue.

"4. It would appear that the purchase of fifty steel cars in 1908 has unduly burdened the property, (1) by increasing wear and tear of tracks as well as equipment, (2) by increasing accidents and pecuniary damages arising from claims for personal injury, and (3) by doubling the interest charges on the investment in fifty cars.

"5. For five years, 1908-1912, inclusive, the Interborough charged the company one and one-fourths cents per kilowatt hour for alternating current. In 1913 and 1914 the charge was reduced to three-fourth cent. Had the latter rate, which would appear to be a fair rate, been charged from the beginning, it would have meant a reduction in the expenses and the resulting deficit of the company of $398,272.17.

"6. If the excessive charges for power and the extraordinary maintenance expenses, representing a liability of the owners of the property and not a proper charge against current revenues, be eliminated, the operating ratio for this company (including an allowance of 20 per cent. of the revenues after repairs and renewals or depreciation) will not exceed 75 per cent. (Exclusive of taxes). With an operating ratio of 75 per cent., the net revenue would have sufficed to pay taxes and bond interest in every year of the period that now shows

a deficit, and the surplus available for interest on Interborough Rapid Transit notes for the entire period would have been approximately $490,000 as against actual charges of $735,497.55. Included in the latter sum is approximately $200,000 of interest charged on the cost of fifty steel cars."

Mr. Weber, do you remember what the charge for each of those steel cars was? Is there anything here that will show? A. Originally, it was between $13.000 and $14,000 for each, then there were alterations and additions and betterments and so on subsequently made. That was the original cost.

Q. Do you know from whom or from what place these cars were purchased by the New York & Queens County Railway Company? A. According to the testimony of the company's officers, they were bought from — I can't say absolutely from the Interborough Rapid Transit Company, but they were cars that were originally bought for use in the Queensboro Subway, the Steinway Tunnel, and as to the company that had the title to them, I have no absolute knowledge.

Q. Then it is that these cars belonged to the Interborough Company, which had them to use in the Steinway Tunnel, but which, not using them in the Steinway Tuunel, turned them over to this Queens County Railway Company at the cost to the Interborough, which was between $13,000 and $14,000? Am I right? A. That is true. If the Interborough didn't hold title to them itself, the title was held through some one of its companies. It would be possible that it would be in the New York and Long Island Company.

Q. Do yon know whether the price charged for those cars to the Queens County Railway Company was the price that the Interborough Company paid for them? A. That I do not know.

Q. Now, continuing the reading of this report, we have the comparison of operating results for the fiscal years 1903 and 1914; that is, a comparison of those two years. "Revenue from transportation: 1903, $612,347.69; 1914, $1,342,652.45. Ratio of increase, $2.19."

Now we come to operating expenses. "For maintaining way and structures, in 1903, $28,320.02. 1914, for maintaining way and structures, $238,526.32. Ratio of increase, 8.42."

The Chairman.— Does that mean that it increased eight times?

Mr. Moss.— Eight and forty-two hundredths times. "Maintenance of rolling stock expenditure — 1903, $35,527.14; 1914, $147,746.78. Ratio of increase, 4.16."

Now, power purchased in 1903 — that is when they had their own power plant?

Mr. Weber.— That is true.

Mr. Moss.— "Power purchased in 1903 — nothing. In 1914, $208,472.92." But there there was an expense of operating their own plant in 1903, which was $68,370.42. "Operation of cars — expense in 1903, $147,916.42; expense in 1914, $385,735.84 — an increase of 2.61."

"Injuries and damages — expense in 1903, $42,726.15; in 1914, $109,350.27 — an increase of 2.56."

I omit a few small items and read the total: "Total operating expenses — 1903, $363,744.40; 1914, $1,152,860.94, being 3.17 times."

(The report from which the above statistics were taken was marked Exhibit 1, April 8.).

Have you anything there, Mr. Weber, which would show the salary of the president of that company? A. No, sir.

(Mr. Weber is excused from the stand, with a request to remain in the room.)

MR. JOHN HOLLEY CLARK, JR., is called to the stand and sworn.

Mr. Moss.— You were formerly counsel for the Flushing Association?

Mr. Clark— I was.

Q. And when you were counsel for the Association, did you prepare the reports which were submitted by Mr. Eadie? A. Yes, sir.

Q. Who requested you to prepare these reports? A. Nobody. I did it on my own initiative.

Q. Wasn't there action in the Association before you prepared them? A. I believe that I prepared the first one before there was any action, and then I was told to proceed with the investigation.

Q. Well, there was a pretty general state of mind in the Association and among the people of Flushing, wasn't there? A. Yes, sir.

Q. And have you found that the feeling of the people of Flushing on this subject is echoed in other communities along the line of this railroad? A. I think it is, yes.

Q. You are now in the Public Service Commission, are you? A. Yes, sir.

Q. Holding what position? A. Secretary to Commissioner Hayward.

Q. Do you know about this case that has been pending that Mr. Weber referred to, Case 1848? A. Yes, sir.

Q. What is that, Mr. Clark? A. That was an investigation on the motion of the Commission into the service of the equipment of the New York and Queens County line. It was inaugurated in July, 1914, and I came into the case about in October.

Q. Of 1914? A. Yes. An order was made for service which was to have gone into effect sometime in December of 1914, but the company didn't have sufficient cars to comply with the order, so they returned a rehearing. In fact, there were two rehearings that extended up to last June.

Q. June of 1915? A. Yes, and the case was closed last September by modified order.

Q. Can you give us a general purport of that order? A. The modified order provided that they should buy additional power equipment for the road, but it didn't provide for service.

Q. It didn't provide for additional cars? A. No, it did not.

Q. But it provided for additional power? A. Yes.

Q. Did it say how they were to get that power? A. Well, it was additions to their sub-stations and transmission lines. They had been running for years with no reserve, so that whenever there was any breakdown, they had to buy power from some outside concern — the Long Island Railroad Company. They couldn't carry the power from the sub-stations to the tracks, because they didn't have enough equipment for that purpose. They

couldn't run any more cars than they had without additional equipment.

Q. Well, has there been any improvement in the service? A. No, I don't think there has been any marked improvement, because there couldn't be without additional cars. They have been running about ninety-six and ninety-seven per cent. of their equipment right along.

Q. What about the provisions for additional power? Have they done anything? A. Yes, they are in the process of completion — supposed to be by May first of this year.

Q. Are they getting all their power from the Interborough? A. Practically all.

Q. If they had not sunk so much money in these steel cars they would have had money to buy other cars, wouldn't they? A. they didn't have the money that they sank; of course, if the Interborough wanted to advance the money, they could have bought three times as many cars as they did get.

Q. These reports of yours, which are marked in pencil, "A," "B" and "C" — did you bring these to the attention of any member of the Public Service Commission? A. Yes.

Q. All the facts were put in this case? A. Yes.

Q. All of these facts were put in in Case 1848? A. Yes, sir, all those facts.

Q. And these facts represented the investigation and study which you gave to the subject as counsel of the Association? A. Yes sir.

Q. Did you bring these facts to the attention of any particular Commissioner? Did you speak to any one Commissioner more than you did to others? A. I think I spoke to Commissioner Hayward when I was counsel to this committee more than anybody else.

Q. That is before you became an associate of the Commissioner? A. Yes, sir.

Q. As counsel to the Flushing Association, you saw Commissioner Hayward? A. Yes.

Q. And did you give him all these facts? A. Yes. He used them in the hearing for this committee.

Q. Will you state what Mr. Hayward or any other Commis-

sioner has done with regard to these facts other than what appears in the order in Case 1848? A. Well, nothing has been done.

The Chairman.— The net result of all this agitation was the modification of the original order, which compelled them to buy more power? A. To put in more transmission equipment.

Q. To buy more power from the Interborough? A. Oh, no, that isn't the idea. It is so they wouldn't have to buy. Of course, when they have to buy break-down power, they have to pay more than they would pay if they got all their power from the Interborough. They ought to have a reserve supply, so that if there is a break-down they wouldn't have a delay, because it not only means buying power, but it means a delay.

Q. They take a reserve force from the Interborough anywhere they can get it? A. No, they haven't the wires to send the power out. If there is anything broken down or if they had a particularly heavy rush, they wouldn't have anything to take care of the power they have got.

Mr. Moss.— I want to call your attention to several statements in this report. I will take first the report of the Transportation Committee, signed by you as Chairman of the Transportation Committee.

> "In December, 1903, the Interborough acquired the New York and Queens by the purchase of practically the entire capital stock, which it holds to-day. The road had a surplus in 1903 of $137,000, which was increased to $237,000 in June, 1907, under Interborough management."

Up to that point the Interborough management hadn't hurt any? A. Apparently not, but you understand, of course, that I am not a C. P. A. I don't know about those things.

> Q. "In July, 1907, the Public Service Commission came into being and before June, 1908, the New York and Queens had taken two steps, which opened the door to Interborough looting and made inevitable a certain and increasing loss on its operations."

Did you mean to suggest in this, Mr. Clark, that the coming into being of the Public Service Commission had given the Interborough an opportunity to do that which they had not done before?

A. I thought at that time that the Interborough had manufactured this deficit to enlist the sympathy of the public and to give a reasonable excuse for not giving good service. They impressed the public generally with the fact that they don't give it, now that there is a Board to make them give it.

Q. The Board didn't make them do any better. A. If that was their reason for making this deficit, they got away with it.

Q. You used the word "looting." That is the way you felt about it? A. Yes.

Q. You say first that here are two steps which were taken that opened the door to Interborough looting:

> "First, the Queens road purchased from the Interborough fifty steel cars for $696,000, or $14,000 apiece. The ordinary car costs $4,500."

Now, that ordinary car wouldn't have torn up the tracks as these heavy steel cars, would it? A. No.

Q. Heavy steel cars that were made to operate upon the specially prepared road bed of a tunnel were altogether out of place as put upon the surface of the ground? A. Yes. They have since put better tracks in.

Q. But it requires unusually heavy tracks to take care of those unusually heavy cars, and is there any advantage gained in the operation of the road by those heavy steel cars? A. I can't see it. I have never understood it.

Q. It hurts the road, doesn't it? A. It certainly does.

Q. It causes accidents? A. Yes, sir.

Q. Cars are not so easily handled, are they? A. No.

Q. In a tunnel they wouldn't have to stop every two or three blocks, but on the surface they have got to stop every here and there to take on passengers.

> "Second, the Queens road spent $303,000 for a power sub-station, and shut down its own power house."

Then you summarize that: "A cold million in one year for so-called 'betterments.'"

> "Why did it pay three prices for these cars? They were heavy steel cars built for the Steinway tunnel. When the City wouldn't mortgage Central Park to get the tunnel, the

Interborough unloaded these cars on the New York and Queens. They tear up the tracks, they use a tremendous amount of power and they must go at a snail's pace to keep on the rails at all.

"Mr. Wood, President of the New York and Queens, said in 1910 before Commissioner Bassett: 'We would not buy any more cars of that kind — those steel cars. We would not buy any more of that kind under any circumstances. They would put us into bankruptcy. They are no more suitable for operation on the street than a subway car would be suitable for such operation.'

"Why did the New York and Queens shut down its own power house and spend $303,000 on this sub-station? For no other purpose than to enable it to purchase power from the Interborough.

"What was the result? In 1905, the last year the New York and Queens generated all of its own power; it cost $65,000 to run its power plant. Its gross revenue was $735,000. In 1912, when it was purchasing its power from the Interborough, the cost of power and of running the sub-station was $346 000, out of a gross revenue of $1,300,000. That is, its power cost rose from eleven per cent. of its gross revenue in 1905 to twenty-seven per cent. of its gross revenue in 1912. This was the highest percentage of all the thirty lines in the Greater City for 1912. The Interborough spent seven per cent. of its gross revenue for power and the average for the entire city was only nine and eighty-five hundredths per cent.

"This cold million for 'betterments' in the form of Interborough cars and an Interborough sub-station was followed by other millions for 'betterments' and unpaid interest on the first million with the result that the interest charges of the New York and Queens were twenty per cent. of its gross income in 1912. Twenty-seven per cent. for power and twenty per cent. for interest. Most of both amounts went to the Interborough.

"The Interborough was therefore getting two cents out of every nickel before the New York and Queens had a chance.

"Is it any wonder the road has run behind to the extent

of over a million since the Public Service Commission came into being?

"So much for the manufactured deficit.

"The first and primary duty of the Public Service Commission as a servant of the whole people is to enforce 'safe and adequate' service from the railroads.

"What of the safety and adequacy of the service on this road?

"First, as to safety.

"In 1912, the road spent ten per cent. of its gross income in payment of claims for injuries and attendant legal expenses. This was the fourth highest percentage of the thirty road in the Greater City of New York and is characteristic of its accident account for all of the years since the Interborough took control. In the year 1912, it killed and injured no less than fourteen hundred and four people, two hundred and sixty of whom were injured by reason of three hundred fifteen car collisions or derailments directly traceable to the poor conditions of the track and the heavy cars which were run upon it.

"Second, as to adequacy.

"In May, 1910, at a hearing before Commissioner Bassett, evidence of frightful overcrowding was produced by the Commissioner's inspectors. After hearing of testimony Commissioner Bassett made the following caustic remarks to Mr. Wood, President of the road, upon the service in general: 'From all I can learn there is more crowding on your lines than in any other part of Greater New York. It is quite apparent that there is a growth of travel going on in Queens County that your company is not meeting and I think you should make preparation for this remarkable increase in travel.'

"At that time and during the summer of 1910, the New York and Queens had 230 operable cars.

"At the hearing before Commissioner Cram in July, 1914, the Commission inspectors reported that the company had just 205 operable cars of which it operated on a heavy Sunday only 165. A decrease of thirty-three cars since 1910, or

thirteen per cent., while traffic increased from 20,200,000 passengers per year in June, 1910, to 26,700,000 in June, 1914, or thirty-one per cent.

"If this is shocking to your sense of decency, what an indictment it is against that million dollar a year public service commission, whose duty it is to enforce safe and adequate service.

"Since May, 1910, there have been six separate proceedings before the Public Service Commission in regard to the general service of the New York and Queens, in which twenty-six public hearings have been held. During that time only two general service orders have been issued. One was made in July, 1911, which was immediately modified so as to be totally inadequate. But in spite of the modification, it has never been obeyed or enforced. The second was in July, 1913, ordering the removal of 118 open cars. This order cut the service in half in the heaviest months of the year and contained no provision for making up the loss.

"I have studied each of the Commission's reports since 1907. I have waded through the volumes of testimony of the thirty-six proceedings brought against the New York and Queens, and I am forced to the conclusion that the Public Service Commission of the First District, if not corrupt, is and has been, as a body, lazy, inefficient and devoid of any sense of its responsibility to the people whose servant it is.

"The evil must be attacked at its root before the tribunal of the people. It must be brought to every trolley rider.

"1. That the New York and Queens County Railway Company is a myth.

"2. That the Interborough Rapid Transit Company is converting into cash dividends every cubic inch of foul air the trolley riders breathe and every moment of discomfort they suffer.

"3. That it is the sworn duty of the Public Service Commission and it has ample power to put a stop to this unsafe and inadequate service."

Now, Mr. Clark, since you wrote this, has the service improved a bit? If so, tell us how much it has improved. A. No, it hasn't improved.

Q. It is in just the same condition, and the power of the Public Service Commission is just the same as it was when you wrote, isn't it? A. Well, about the same, I suppose, but since that time there have been court decisions which held up the Commission and kept them from making any orders in regard to the service. For about eighth years during the time of the old Commission, orders were entered against a great many of the roads in the city, which provided that the roads should either give seats for passengers in any half-hour period or else run their maximum service, and for those eight years the order was never tested in the courts. But last June an order of that kind was taken up both in Brooklyn and on the Interborough, and in both cases it was held to be unenforceable by the courts.

Q. Has any step been taken that you know of by the Public Service Commission to gain any additional power through legislation at Albany this season? A. Not in regard to services. It isn't a question of law — it is the construction of the law by the courts.

Q. But is there any way in which the law can be amended? A. I have always held, and Commissioner Maltbie held, that the fact that a railroad is not making money is no excuse for their not giving good service. The law says they must give service. They are servants to the people, and they should give it.

Q. Well, has the law been tested in this case? A. Not in this case.

Q. Has any case been laid so that you could get a ruling by the courts when the railroad claims that it is not making money and you can show that its not making money is a bit of hugger-mugger? A. No, there has never been such a case.

Q. You don't know, of course, why the Commission don't get after these folks and make a record on that line? A. I don't know.

Q. You have always wondered? A. Yes.

Q. Now, referring to these steel cars, the report is so long, Mr. Chairman, that I won't read it all. A. But I might say, about this particular case, the Legal Department advised that the record was not such that they thought it would be proper to go to the courts on it. I mean the facts were not such that they would advise doing it.

Q. Who made that report? A. I believe it was Mr. Semple.

Q. Referring to the Interborough steel cars, the city refused to purchase from the Interborough the Steinway Tunnel. The Interborough had purchased for this tunnel fifty steel cars at a cost of $696,584.34, or $13,931.69 per car. In the same year, 1908, the New York and Queens gave the Interborough its five per cent. notes for $662,844.17 as part cost of these fifty steel cars. The rest of the $696,584.34 was paid thereafter. A. I might say that that statement was not substantially correct. They actually paid the money. There was no profit on it.

The Chairman.— It saved a loss, though, didn't it? A. Yes, but they didn't sell them at any more than they cost them.

Q. But there would be a profit, because they unloaded them and couldn't use them otherwise.

Mr. Moss.— In 1911 the New York and Queens purchased twenty-five cars at $4,700 apiece. Were these $14,000 steel cars three times as good as ordinary $4,700 cars?

The Chairman.— I think from the facts you have elicited, they were not. They didn't improve the service and there were more accidents.

Mr. Moss.— And the closing sentence was "how the Interborough, masquerading as the New York and Queens, has bamboozled the public with this manufactured deficit, how it has disobeyed and evaded orders of the Public Service Commission with impunity, and how unsafe and inadequate its service has been and is, I will show in further statements."

Mr. Clark.— Just one additional statement in regard to the taking up of these matters in court. The Commission has always been of the opinion that the proper form of order was the form which is now being tested in the court, which is in the Appellate Division now. Of course, I can't speak with absolute authority, but I believe they are awaiting a decision on that case before they really go ahead with any legal proceeding on this case or any other similar service matter.

Adjourned for lunch at 1:30 P. M.

AFTERNOON SESSION.

Committee called to order at 3:15 P. M. by Senator Thompson.

Mr. Moss.— I think we will just put in evidence those reports that Mr. Clark prepared. They have been marked as Exhibits 2, 3 and 4.

Miss Pauline Goldmark is called to the witness stand and sworn.

Mr. Moss.— Miss Goldmark, you represent the National Consumers' League? A.

Miss Goldmark.— Yes, sir, particularly working on the question of public franchises and the wages paid by franchise companies.

Mr. Moss.— Miss Goldmark has prepared a statement, Mr. Chairman, and I have promised her that she might read it here.

Miss Goldmark reads statement from memorandum put in evidence as Exhibit 5.

Senator Thompson.— What is the prevailing rate of wages among that class?

Miss Goldmark.— There are now ten thousand excavators on strike, asking for two dollars instead of $1.60 and $1.75, which they now receive.

Q. Previous to this strike, did you ever make any investigation as to what the prevailing rate was? A. I think it would be admitted that two dollars might be recognized very fairly as the prevailing rate of wages, if not a larger sum, for the city of New York and under those conditions of labor.

Q. What I want to know is whether you made the investigation to see what other people have been paying? A. No absolute investigation, but the city itself has made that investigation Mr. Thompson, and the Bureau of Standards made an investigation and claims that for unskilled workers—the exact title of that report is given in this little memorandum (Exhibit 5)—a wage-earner and his wife and three children under the age of fourteen

canno mtaintain a standard of living which would come up to American ideals under $840 a year.

Q. I agree to all that, but the question is a legal one in relation to the enforcement of the provisions of the contract. That means that there is some legal foundation for the statement.

Mr. Moss.— Don't some of them pay two dollars? A. Some of them do.

Senator Thompson.— That would establish the prevailing rate. A. We found some paying $1.60 and some up to two dollars, where the men insisted on getting it; therefore, in these sections that is the prevailing rate. It is an anomalous condition, that you might find one prevailing rate here and another there, and both of which are claimed legal.

Mr. Moss.— How many are paying two dollars? A. A minority.

Q. Have you looked to see whether the contractors, in making the estimatets for their contracts, figured on two dollars? A. They certainly did not.

Q. I mean in their bids.

Q. They don't need to put it in their bids. But in making their estimates, some contractors tell us that they have lost bids because they have put what they consider a fair and reasonable wage into their bids and other contractors, basing their estimates on a lower wage, have gotten the contracts over their heads. That happened in some of the supplementary contracts entered into this year by the Public Service Commission.

Senator Thompson.— Who told you that? A. That was talked over by one of our investigators with one of the chief men of the contractors.

Q. Well, I don't care to tell you any secrets, but such investigations as we have made show that most of them have been on such a basis as they could afford to pay two dollars a day. A. Well, they are all wanting to clear a large amount, but it really is intolerable that there should be ten thousand men striking against the wages paid for a great improvement to the city like this, and

asking for something which I think is recognized as moderate—a demand for two dollars a day, because this work, as shown in another article which I am submitting today, an article by Mr. Matthews on "Muckers," who are these excavators, is difficult. They often have to work standing in the water, and there are great dangers. It is much more dangerous than any overground employment like street-cleaning or the ordinary laborer's work.

I would like to say in conclusion, Mr. Chairman, that we should like very much to have you take up this matter of getting a just method for a just wage for these workers in the final report of this Committee, and we would like for you to take our suggestions under very careful advisement.

Q. We will do that, but I don't think this Committee would take any course that might be construed as in any way interfering with this strike. I don't think we ought to do that. If the strike should be over and we can make an investigation without taking sides in this controversy, I will promise you on behalf of the Committee that we will investigate this matter for you. A. Thank you very much.

Adjourned until 11 A. M., April 15.

APRIL 22, 1916

MUNICIPAL BUILDING, NEW YORK CITY.

STATEMET BY CHAIRMAN.

The Committee came to order 11:30 A. M.

The Chairman made the following statement:

In order to correct any erroneous impression which might have gained currency on account of the attempt at a resolution affecting this Committee in the last week of the session of the Legislature, I think the record ought to show the status of the Committee at the present time.

On March 6th the concurrent resolution was passed through both houses of the Legislature recognizing the Committee, the existence of which would have otherwise expired on that date, and continued the Committee and its investigation until July 1st, 1916. The resolution further continued the Committee for the purpose of preparing and making its report to the Legislature until January, 1917. That resolution received the unanimous approval of both houses and became a bill, and continued the power of the Committee accordingly. No resolution has since been passed, and the Committee stands and continues under the resolution of March 6th.

On April 12th the resolution was passed through the Senate making appropriation of $50,000 for the expenses of the Committee. This went through to the Assembly and was referred to the Committee on Rules. The Committee on Rules held this resolution, and on April 18th, without any notice and in accordance with the meeting held the night before, it reported to the House an amended resolution the substance of which was not stated to the House and the individual members of the Assembly did not understand its contents, but had every right to believe — which they no doubt did — that it was an original resolution from the Senate. On account of that situation it was passed on a quick roll-call, in less than half a minute, nobody understanding what it contained except the members of the Committee on Rules who participated in the draft of the amendment to this resolution

the night before. As soon as the resolution was understood, which was that it carried an appropriation of $25,000 instead of $50,000, and limited the Committee in time to the date of the passage of the resolution, cut off its power, by this time the amended resolution had arrived at the Senate desk. And when the Senate went in session it promptly unanimously non-concurred, and defeated the resolution.

That is the history of the situation, except that a Conference Committee was appointed by the Senate, meeting a committee of personal representatives to speak on the 20th of April. But when it was understood by the Conference Committee that this joint committee had all its power under the previous resolution, and that the Legislature was obligated to pay its bills, whatever they were — were they rightfully incurred to make the investigation which had been heretofore authorized — it was thought best to allow the matter to stand, because the session was about to adjourn that night.

Therefore the Committee will continue, and take up the matters of the investigation where it left off five weeks ago, and meet daily until the investigation shall be finished, or its limit of time shall have arrived.

Owing to the fact that the members of the Committee have also been members of the Legislature and have been obliged to give all their time to legislative matters in the last few weeks, it is no more than fair that the members of the Committee shall be given an opportunity to go home and arrange their affairs. And for that reason we will take an adjournment of one week, and the Committee will now adjourn until Monday, May 1st, at 11 o'clock A. M., at which time the investigation will be taken up and continued without any restriction or without any fear or favor.

Before taking this adjournment I want to acknowledge the loyalty of the counsel of the Committee and his assistants, who have all personally assured me of their cooperation until the final conclusion of the investigation, expressing themselves as willing to work without pay if necessary, but in any event to wait until the Legislature meets the obligations which the State has fairly entered into.

We will suspend now until Monday, May 1st, 1916, at 11 o'clock A. M., at this place.

MAY 1, 1916

CORONER'S COURT, MUNICIPAL BUILDING.

Held in the Coroner's Court, Municipal Building.

The Committee came to order at 11:00 A. M., Senator Thompson presiding.

Mr. Moss: Mr. Chairman, I shall ask you to give your attention this morning to the two accidents that occurred last September on Seventh avenue and Broadway, which we refer to in this city as the cave-ins.

Testimony of GEORGE P. LE BRUN; examination conducted by Mr. Frank B. Moss. (Witness is sworn.)

Q. Mr. Le Brun, in what way are you connected with the coroner's office? A. I am assistant clerk in the coroner's office.

Q. In October, 1915, were there a series of inquests in your office upon the deaths of persons that were killed in a cave-in of the subway on Seventh avenue? A. Yes, sir.

Q. And also on Broadway? A. Yes, sir.

Q. Those two accidents occurred on September 22 and September 25, did they not? A. Yes, sir, thereabouts.

Q. And the inquest proceedings taken by a stenographer and reported in one volume were mostly with reference to the Seventh avenue cave-in? A. Yes.

Q. You have handed me several bundles of papers which you told me were obtained from the district attorney? A. Yes, sir.

Q. These are the original inquest papers in some of those cases? A. Yes, sir.

Q. Now, I want to get from the records the names of persons who were killed, as appears from these inquest papers. The first one which I find in this list is John W. O'Rourke; died of fracture of the skull and fracture of the ribs? A. Yes, sir.

Q. I find a verdict attached to this inquisition? A. Yes, sir.

Q. Which I read into the record: An inquisition taken at the Coroner's Courts, Criminal Courts Building, in the Burough of Manhattan, City of New York, before Israel Feinberg, of the borough of the aforesaid, into the cause of the death of John W.

O'Rourke, upon oath and affirmation of twelve men who were properly described, and they do upon their oaths and affirmations say that the said John W. O'Rourke came to his death on the 22d day of September, 1915, at the subway excavation on Seventh avenue from fracture of the skull. That the said death was due primarily to an excessive blast at the northeast heading of said excavation. That while due care was not exercised in estimating the amount of explosives to be used in this particular blast, the evidence submitted does not show criminal negligence by the department of combustibles, city of New York, which has control of all blasting operations. We recommend that at the time of blasting in the subways of greater New York no traffic of any kind be allowed over any kind of temporary structure. Public Service Commission shall designate as to which temporary work shall precede the permanent structure. The jury in deploring this accident expressed the hope that it will serve to impress upon all contractors and the Public Service Commission utmost caution and care in the operation of all subway work.

The next name I find is Steve Tourk; a fracture of the neck. The next is Sadie B. Stuart; fracture of the skull. The next is Martha Newton; fracture of the pelvis. The next is Toni Balagh; fracture of ribs. The next is James D. Nucci; cause of death submersion — otherwise, drowning The next is Louie Krugman; fracture of skull. Now there is one that seems to be missing — James MacCormick. A. He died of fracture of the skull. I can bring that record up. The district attorney could not find that MacCormick paper this morning.

Q. Well, that is eight deaths in that accident? A. Yes, sir, in that one accident.

Q. Well, how many deaths occurred in the Broadway accident? A. One; some woman.

Q. Do you remember the name? A. No, sir; it was a foreign name.

Q. Well, if you find the papers on that, I wish you would send them in. A. I can get you that name.

Q. I wish you would. But were these eight those who died in the Seventh avenue cave-in? A. Twenty-fourth street and Seventh avenue.

Q. And does this book show the stenographic record of the coroner's inquest on the Seventh avenue accident? A. Yes, sir.

Q. Now I will return these to you.

Testimony of RICHARD G. BABBAGE; examination conducted by Mr. Frank B. Moss. (Witness sworn.)

Q. Mr. Babbage, have you an official relation to the United States Realty and Improvement Company? A. I am vice-president and general counsel of the company.

Q. And did that company have the section of the subway in which these accidents occurred? A. I am a contractor.

Q. Was Wm. H. Havemeyer a director in that company or a stockholder? A. At what time?

Q. At the time of this accident or before it? A. I couldn't say. He was at one time; whether he was at that time I couldn't say. I offered the Committee the stock list beforehand to be inspected. I can't carry those 700 names.

Q. Did his estate hold stock? A. That I can't say. I shall gladly produce the stock list.

Q. Was Wm. H. Havemeyer a director for a number of years? A. At one time years ago he was a director, yes, sir.

Q. There was given in the coroner's inquest a list of the directors of the United States Realty Company at the time of these accidents, which I will read from the list, and if you will kindly consider them as I read them, see if there is any error which you know of: H S. Black, chairman of the board; W. S. Kinnear, president; Wm. A. Merriman, vice-president; R. G. Babbage, vice-president and secretary; Paul Starrett, vice-president; Geo. P. Mortimer, vice-president; B. M. Fellows, treasurer; H. O. Windsor, auditor; and directors: W. S. Kinnear, Chas. E. Hermann, R. G. Babbage, B. M. Fellows, Frank A. Vanderlip, Frederick W. Upham, Henry Brunner, Franklin Murphy, Wm. A. Merriman, Wm. C. Pollon, John D. Cummins, H. S. Black, G. A. Valentine, John F. Harris. Did you have charge, Mr. Babbage, of the adjustment of claims for injuries that were made in connection with this accident? A. To a certain extent, yes, sir.

Q. How many persons who claimed to be injured made claims? A. There have in all been made ninety-nine claims for deaths and personal injuries.

Q. Did that include the deaths? A. That included the deaths.

Q. So that would make ninety for personal injury outside of death? A. Yes, sir. I don't remember about the nine deaths being the exact number, but I know that the dead and injured numbered ninety-nine.

Q. Have all those claims been settled? A. All with the exception of two. One on account of one other death and one on account of a man who claimed to be injured that we really don't think was really injured. Those have been recently submitted. The others have been settled.

Q. Were suits brought? A. Yes, I think that there were a few suits brought, but no suits were ever prosecuted.

Q. The company paid these? A. We adopted a system of settling.

Q. Are you willing to state the amount that was paid out? A. The amount paid out for the settlement of the personal claims amounted to about $170,000. I am having accurate statements prepared, but $170,000 is approximately correct.

Q. Now, Mr. Babbage, if you will kindly send up by some clerk a statement of Wm. H. Havemeyer's interest, of his estate, I would like to have it. A. Do you mean at the time of the accident?

Q. Yes; I am informed that his estate was held by stockholders, and if you will state the stockholders of that stock in the communication which you send us, I think we can excuse you from further attendance. Are you interested in any other subject with a contractor besides the one that I have referred to? A. Not directly.

Q. Are you indirectly? A. We are a stockholder in another company.

Q. What is that company? A. That is a company known as the Mullen Hart Company. We have a quarter of the stock.

Q. Does the $170,000 which you spoke of include both the accidents? A. Yes, sir, both the accidents.

Q. What is the Mullen Hart Company contract? A. The contract for the construction of the settlement which extends under the Harlem river.

Q. It includes the tunnel? A. Yes, sir.

Q. What officers of the United States Realty and Improvement Company were officers of the Mullen Hart Company? A. Mr. Mayner, our president, is the vice-president of that company.

Q. Is Mr. Fellows secretary of the Mullen Hart Company? A. I think he is the treasurer. I am not quite certain; I think he is the treasurer.

Q. The connection between the two companies is made through those two gentlemen?

Testimony by Mr. LEONARD M. WALLSTEIN; examined by Mr. Frank Moss.

Q. During September and October last you were holding the same position that you now hold? A. Yes, sir.

Q. And in your position did you make an inqury into the accidents which you have discussed? A. An inquiry into the causes of those accidents?

Q. Yes. A. Yes, sir.

Q. Did you go yourself into the subway? A. I made, I believe, two or three visits, accompanied by some of the engineers in the excavation in question.

Q. What engineers were advising you? A. There was a list of twenty odd engineers appointed by the mayor, a committee for that purpose.

Q. Did you have the advice of any other engineers in addition to the engineers appointed by the mayor to form this committee? A. I had the assistance of a representative of the United States Bureau of Mines, Mr. Chas. Enzian, who came to my office one day.

Q. I think you were just saying that you have had some communications from Mr. Rice and Mr. Enzian, representing the Bureau of Mines of the United States government? A. Do you want the history of that?

Q. Yes, I would like to have it. A. Mr. Enzian came into my office, having sent his card in first, and stated that he was an

attache of the Bureau of Mines, the Pittsburgh office, I think. He said that he had been assigned by the bureau as part of its routine to look into these accidents, because they were constantly engaged in making a study of situations of that sort for the purpose of getting as much light as they could on friction throughout the United States. I wired to the Bureau of Mines to ascertain the genuineness of Mr. Enzian's representations as to his connection with that bureau and received in reply this telegram, which stated in effect that he was what he represented himself to be.

Q. I will read this telegram right in. New York, September 13, 1915, United States Bureau of Mines, Wilkes-Barre, Penn.: "Is Charles Enzian, the mining engineer, connected with your office and authorized to assist in investigation of subway structure accidents in this city? Wire." Signed by Leonard M. Wallstein, Commissioner of Accounts.

Answer from Washington on October 1, 1915. To Leonard M. Wallstein, Commissioner of Accounts, New York — "Charles Enzian of the United States Bureau of Mines authorized to investigate cause of subway structure accidents. This by wire from director, who is the W. O. P. Hood, for the director."

A. Upon receipt of that telegram, I welcomed the assistance of Mr. Enzian, and I arranged with him that the police department and the fire department should give him all necessary facilities for making the study that he came on to make. He visited with me and added his expert opinion and testimony to that of the Mayor's committee of engineers, and substantially concurred in our views. Thereafter, I received a report from the United States Bureau of Mines entitled "Report on Accidents of New York Subway, September 22 to 25, 1915"— by Charles Enzian; with comments by George S. Rice, dated October 26, 1916, which report came to me after my own had been submitted to the Mayor. I was desirous of making that report public, but remembered that in certain conversations with Mr. Enzian he gave me to understand that the United States Bureau of Mines thought that its usefulness would be impaired if anything in the nature of a critical report as to any observations that it made anywhere was made public. He regarded that the function of the bureau was rather constructive, for the purpose of learning the lessons of various accidents

so as to prevent a recurrence of them in the future; but whatever the reason for it was, I knew what the feeling was, and, therefore, upon receipt of that report, I sent another wire, which I will produce. Well, now, first, this is the letter from the director enclosing the report.

Q. I will simply refer to that as a letter of October 28, 1915, by C. H. Manning, director of the Bureau of Mines, enclosing the report of Charles Enzian, mining engineer, referring to the accidents and the discussion. A. That's my letter acknowledging the receipt of it, dated October 15, 1915. This telegram I sent the same day to the United States Bureau.

Q. This is an inquiry of Mr. Manning to Mr. Wallstein, asking if the reports may be made public: "May Enzian and Rice reports on subway accidents be made public here? Please wire." A. To which I received that reply.

Q. "Enzian and Rice reports on subway accidents sent you for confidential information of New York City authorities and should not be made public." A. This is a confirmation of that telegram, which came by mail, signed by Manning, Rice.

Q. "Reports on subway accidents sent you for confidential information for New York City authorities and should not be made public." Acknowledgement dated October 29. A. Before all of this, I had submitted my report to the mayor, and under date of October 8, 1915, sent to the district attorney a copy of it with that letter.

Q. To Charles A. Perkins, dated October 8, 1915: "I enclose herewith copy of my report to the mayor of even date in reference to the matter of the recent subway collapses. On second thought it occurs to me that your convenience, as well as mine, will be served, if, instead of me sending to you all the photographs, drawings, etc., which you have collected, you will ask your representative to call at this office to go over the material with me, with the view of selecting such portions thereof as you will require." Signed by Mr. Wallstein. A. To which I received this reply.

Q. Letter of the district attorney, Charles A. Perkins, to Mr. Wallstein, dated October 22, 1915: "I thank you for your letter of October 8, enclosing a copy of your report to the mayor, concerning the subway collapse. Assistant District Attorney Follette

has charge of the proceedings before the coroner. I am handing him the report and asking him to call at your office and go over the material with you as you suggest." A. Thereafter that letter was sent and received.

Q. This is a receipt signed by Mr. Follette, whom I have referred to. This is a letter by Mr. Wallstein to Mr. Follette? A. Oh, yes.

Q. It includes the memorandum of the Broadway accident? A. Yes, sir.

Q. What memorandum is that,— your own? A. I think some working memorandum. I have all the papers here.

Q. And various photographs? A. Yes, sir. Upon receipt of the report of the United States Bureau of Mines I construed that the thing would be made available to the New York authorities as including the district attorney, and, therefore, sent to him a copy of the report with that letter.

Q. Letter of the commissioner of accounts to Mr. Perkins, district attorney: "I forward herewith copy of a report received from the United States Bureau of Mines, as the result of the investigation of the two subway accidents in this city on September 22 and 25, respectively. You will observe that the conclusions reached by that bureau's engineers are substantially the same as those stated in my report to the mayor under date of October 28. Bureau of Mines advises me that the reports are for the confidential information of the authorities of this city and should not be made public." A. In answer to which, I received that in reply.

Q. Reply to Mr. Wallstein, dated November 15; signed by Mr. Perkins: "I thank you for the copy of the report from the United States Bureau of Mines which was sent me on November 1. I will, as you suggest, regard it as information which is confidential and not to be made public." A. After that I received that. I received from the director of the Bureau of Mines some correspondence which he had had with Chief Hammit, of the Bureau of Fire Prevention.

Q. (By Mr. Thompson.) I would like to ask a question right here. Of course, the United States government suggested that a report not be made public, and that's what your suggestion was to

the district attorney. Is there a difference when he says that he regards it as information which is confidential and not to be made public — was it intended by the Bureau of Mines that the local authorities should not act on the information contained in that report? A. I didn't so understand it.

Q. The information was for you to use and go ahead as you saw fit? A. I assume so. This is the correspondence I referred to that came from the director.

Q. (By Mr. Moss.) Now these are three letters that show as a result that Mr. Hammit, Chief of the Bureau of Fire Prevention, requested Mr. Manning to let him have a copy of that report and Mr. Manning referred the matter to Mr. Wallstein and furnished him with a copy? A. To which I replied thus.

Q. This is a letter of November 11, by Mr. Wallstein to Mr. Manning, stating that he has furnished to the Bureau of Fire Prevention a copy of the report. A. Which refreshes my memory to the effect that I did furnish a copy to Mr. Hammit, though I had no apparent recollection of it. Here is some correspondence with Mr. Enzian, that we had sometime along there with reference to such papers.

Q. I appreciate the commissioner's attitude, and I am simply saving the records.

Mr. Moss.— Mr. Chairman, I want to offer in evidence the report made by the commissioner of accounts to the mayor, a copy of which is now in my possession, having been furnished me by the district attorney's office, which I now hold in my hand.

Q. (By Mr. Thompson.) You say your report was dated October 8 and this report was dated October 29; did you ever use the information that came in the report? A. Not the information contained in the report, but so much of it as Mr. Enzian told me in advance of having made his report, which was an informal conversation. In other words, I never used the information as such, but such information as contained therein.

Q. By the time you got Mr. Enzian's report, your work had been finished? A. Yes, sir, by the time I got his report.

Mr. Moss.— Now this is not a very long report, Mr. Chairman. I will ask that it be spread upon the record, but I will read to you some extracts from it so that you may be able to follow it. (Report to mayor dated October 8, 1915, marked Exhibit No. 1, read into evidence.)

Q. (By Mr. Moss.) Isn't it your recollection that the wall upon which it fell presented a fairly smooth surface to the eye and apparently was considered to be safe, and so it wasn't supported? A. Well, my understanding of that situation was that on the other side of the cut they had provided something so as to avoid a slip along the line of stratification. The piece that fell here was not a slide along the lines of stratification at all. It was what the engineers coached me into saying was cross-fracture, which is not a cut along the lines of stratification but a different kind of separation of one kind of rock from another because of weather and traffic, but not short up.

Q. That cut was about thirty-five feet deep? A. Yes, about thirty-five feet deep.

Q. So that it wasn't an ordinary sewer proposition; it was a deep cut? A. I can't make comparisons because my technical knowledge is rather slight and confined altogether to this particular thing.

Q. Did you find whether or not the temporary structure had been stripped to allow the introduction of the permanent steel in Seventh avenue? A. I don't know what "stripped" means.

Q. Bracing had been cut out. A. I have no recollection on that.

Q. Well, we will cover that in another way. I think that is as far as I care to examine you unless you want to say something. A. No, sir; I brought everything so that nothing would be lacking.

Q. Did you take any testimony from Mr. Larkin or simply talk to him? A. There is something in my talk. (Points to certain portion of book of minutes.) On page 117.

Q. This page 117 in this book of minutes which you have handed me is entitled "Executive Matters in Re Subway Accidents Before Hon. Leonard M. Wallstein, Commissioner," and says: "October 6, 1915, Chas. Enzian called as witness, testified as follows"— and then proceeds his examination by question and answer. Was he sworn? A. I think not. I regarded his testi-

mony rather in the light of expert advice and opinion. I don't know though; whatever the record shows there is a fact.

Q. Was this a record of your proceedings? A. That is part of it, and there is another part. This is entitled "Conferences," and that has some other title.

Q. But it is part of the record of your office? A. Yes, sir.

Q. Then I think it would be fair, Mr. Chairman, to read from portions of Mr. Enzian's testimony. You have no objection to that, Mr. Wallstein? A. I have no objection.

Q. Mr. Enzian states that he is a mining engineer connected with the United States Bureau of Mines, and has been engaged there for five years, and was in private practice before; that his experience has been in the line of mining development and investigating mine accidents; that he had examined the area of the Broadway accident and had reached some conclusion as to the process that was followed there in the fall of the rock. He says, in his opinion, that the Broadway accident was due to a rock slide and cave from the west wall north of the crosscut to the shaft on the northwest corner of Thirty-eighth street, and that the slide was along the line of fractures of cross checks in the rock and not along the stratification beds, nor along the height of the rock. He was asked, however, "If at all in your opinion did the cutting of the transverse shaft at Thirty-eighth street extend to the rock that fell, or contribute to the rock which fell? A. The removal of that rock acted similarly to the removal or the weakening, at least, of the abutment supporting the lever."

He says in the removal of the rock in the cross-cut you removed the longitudinal support, the prismatic mass of rock that had been weakened by cross fissures and the weight of the overhanging mass of rock.

He was then asked this question: "Now, is it your opinion that after the cutting of the transverse cut, the north wall had been braced by timbers north and south of the transverse cut that would have prevented the initial longitudinal movement, which was essential to the separation and fall of the rock? A. If it had been sufficiently braced, yes." "Q. Could timbering designed to prevent the removement of the rock have been installed in such a way as not to interfere with the use of the shaft for the purpose

for which it was made? A. If the cross-cut had been made large enough to allow the installation of the timbering." "Q. Then, either by means of the method of installing the timber or by means of increasing the size of the cross-cut some timbering method to prevent the south movement of the rock would have been practical? A. Yes, sir."

Testimony of Mr. J. L. HAMMITT; examined by Mr. Frank Moss.

Q. Mr. Hammitt, what is your relation to the department? A. chief of the bureau of fire department.

Q. Under the direction of Mr. Adamson, fire commissioner, did you make some investigation of the accidents in the subway at Seventh avenue near Twenty-fourth street on the 28th of September, about that time? A. Yes, sir.

Q. And were your investigations covered in a report which you made to the fire commissioner under date of September 28th? A. Yes, sir.

Q. Have you a copy of that report which you can let us have? (Report of September 28, 1915, to Hon Robt. Adamson, fire commissioner, marked Exhibit No. 2, read into evidence) Now, upon what examination did you make these conclusions, Mr. Hammitt? A. The conclusions were based upon the examination of the blast till midnight and upon a personal examination of the conditions and the excavation subsequent to the accident.

Q. That was by you? You made a personal examination? A. I made a personal examination on several occasions and in company with various officers of the fire department.

Q. You did take the testimony of quite a number of men that worked in the subway at those points, didn't you? A. I stated the portions of the investigation upon which those conclusions were based yesterday.

Q. And you reached a solid conviction that there was not too much dynamite used? A. No, sir; that there was not more dynamite used than would be necessary to do the work intended under ordinary conditions, but that there was more dynamite used

than should have been used under the conditions that occurred in that heading.

Q. That is on account of the seam? A. Yes, sir.

Q. I will take a sentence which I will read to you "that the bureau of combustibles, fire department, City of New York, has control of all blasting operations is hereby severely censured for not carrying out through its engineers powers assigned to it by the board of ordinances." The bureau of combustibles is under your direction, is it not? A. Properly it should be called the division of combustibles, which is a part of the bureau of the fire department.

Q. Was any proceeding had into the fire department after this verdict of the coroner's jury looking to the fastening of responsibility upon any one connected with the bureau of combustibles, of the department of combustibles? A. There was not. So far as I recollect there was not an investigation made by the fire department subsequent to those findings of the coroner's jury. I did obtain through the courtesy of the Public Service Commission, which had taken a transcript of the testimony before the coroner, a copy of that transcript and caused that to be read by the inspector of combustibles and inquired of him whether it contained any evidence relating to the cave-in that we had not previously received and considered, and reported to them that it did not. I call your attention to the fact that the coroner's jury presented a verdict of censure in general terms without giving us any very definite information as to what were the places for the censure.

Q. Did you learn what was the basis, or did you receive any information as to what was in their minds when they made this answer? A. I reached this conclusion from a reading of the testimony before the coroner's jury, not my own reading but the reading which I had made through the bureau of combustibles, and I concluded that what the coroner's jury had in mind was the fact that the mat which is provided at every place where blasting is done was not used for the purpose of covering over the blast as is prescribed in a certain section of the code of ordinances, which section is designed to protect against the scattering of loose stones from a blast of dynamite.

Q. Well, it was the habit not to cover the blast in the subway with a mat? A. It was the habit not to cover the blasts in the subway except in a very rare instance, mostly small block holes at the bottom of the excavation, which holes are attended with a certain amount of the kind of danger for which the use of a mat is prescribed, which kind of danger does not exist in the cut and cover subway excavation work.

Q. Well, is it a fact that with the knowledge of the fire department the blasts in the subway were being fired without any covering? A. It is, yes, sir.

Q. And does that still continue? A. Yes, sir.

Q. Well, were there not accidents before this where rock thrown out from the blasts has not been stopped? I find references to such occurrences in the testimony. Didn't you know of such occurrences? A. I know there had been such occurrences.

Q. Hadn't your department taken into consideration the fact that the unprotected blasts might hurl rocks against the posts and injure the structure that was supporting the temporary street? A. Certainly, but that could not be protected against by placing a mat on the rock. On the contrary, if you place your rope mat on top of the rock and your log on top of the mat, the same force which hurls the rock against a post with sufficient force to knock out the post will make a missile of every one of those logs, unless there is a method available for anchoring those logs down, which did not exist at this particular time, at this particular blast, and does not exist in the ordinary days in the subway excavation.

Q. Well, wasn't the basis for the criticism that the inspectors of the department had not made — had not paid sufficient attention to these blasts? Had not been on the job to speak of sufficiently? Had not supervised these ignorant men? (I speak of ignorance in the ordinary sense of the men that were firing the blast.) Wasn't there a criticism of that kind? A. I don't think the criticism was based upon any such assumption, and I do not think it possible in view of the record of the inspections that havo been made for any such conclusion to be reached.

Q. Does your department have any inspectors upon the job at the time of blasting? A. Only occasionally It is not our regular practice.

Q. What do the inspectors do? A. The inspectors visit the magazines, see that there is a proper record of the receipt and use of dynamite, see that no one is engaged in the handling of dynamite who has not received an examination in the fire department and obtained a certificate of fitness which is the guide to the inspector as to whether he is ignorant of that particular kind of work, and investigate accidents, watch the licensed blasters in the course of their work and give them cautions against the kind of carelessness which upon such inspections they find most likely to be found in the course of that work A job of this sort would probably be visited once in two or three days by a man especially assigned to that kind of inspection and possessed of considerable experience and judgment regarding that kind of work, and the magazine would be visited by an inspector or a representative from the fire headquarters at least once a day.

Q. And would he report, would the inspector report, to you? A. To the inspector of combustibles

Q. And do you have those reports in writing? A. We have reports of the receipt and use of the dynamite and a few matters that are always covered by the inspectors in writing. In addition to that the inspector keeps a diary so as to have a record of his own visits at all the places where he goes.

Q. Well, have you the records, the reports of these men for a month preceding this accident? A. I believe we have all of them, and we certainly have most of them.

Q. Well, I will ask you to look them over and let us have them after recess. That will be at half past two.

The report of Mr. Hammitt to Mr. Adamson, fire commissioner, was transmitted to the mayor by a letter of the fire commissioner dated September 30, 1915, from which I quote these sentences: "No attempt was made in this investigation by the fire department to inquire into the adequacy of the timbering structure." And again it evidences "that the noise of the explosion was just about the same as that of the daily blasts in that and other similar excavations." Another sentence I take is — (Withdrawn). Then Mr. Adamson quotes from Mr. Hammitt's letter: "It is obviously impossible for the amount of dynamite loaded in the four holes which was shot immediately prior to the cave-in to have

caused the progressive collapse of the roadway which terminated only when checked with the permanent steel structure."

Mr. Moss.— Mr. Chairman, I want to ask your opinion of this report of the United States government engineers.

Mr. Thompson.— In what respect?

Mr. Moss.— Well, I would like to get the statement of facts and the opinion of these men into the records, if it is possible to do so.

Mr. Thompson.— Is there anything there that bears on the cause of this accident?

Mr. Moss.— Oh, yes.

Mr. Thompson.— That wasn't sent to the district attorney; rather, when was that sent to the district attorney?

Mr. Moss.— According to the testimony Mr. Wallstein gave, about November 5, 1915.

Mr. Thompson.— When was the investigation before the coroner completed?

Mr. Moss.— I can't give you the date of that.

Mr. Thompson.— And subsequent to that?

Mr. Moss.— I think from the fact that we have already in evidence testimony which Mr. Wallstein took from engineers and his statement that we have gone over the matter thoroughly with Enzian before he made his own report that that makes it permissible for him to do so. I think that this is clearly permissible because the papers that I have in my hands now come from the offices of the district attorney.

Mr. Thompson.— His question is whether they acted upon that information in the report; whether they did or did not; that's important to us.

Mr. Moss.— Well, the district attorney was not limited by the coroner's inquest. He had the grand jury, and his answer to the

commissioner of accounts is dated November 15, 1915, in which he acknowledges the receipt of this document.

Mr. Thompson.— That they are subject to twenty-five engineers and assistants in the department of Public Service Commission down there; they should have ascertained the correct cost and if the facts were as open, as apparently they must have been, from permitting two strangers to come in here and make an investigation of over two or three weeks and find these facts, why this engineering force probably ought to have prevented the accident.

Now, we are interested in that, and these facts are important from our viewpoint. We are not interested in the district attorney, nor the commissioner of accounts, but we are interested in the Public Service engineers, and if they didn't find this out, we want to know.

Mr. Moss.— Then I will read this. (Comments on Seventh avenue accident of September 22, 1915, marked Exhibit No. 3, read into the evidence.)

Mr. Thompson.— We will disband until two thirty this afternoon. (Adjournment.)

The Committee came to order at 2:30 P. M., Assemblyman Feinberg presiding.

Mr. Moss.— Mr. Chairman, I have a communication from the mayor's office answering a request, which encloses the report of the engineers appointed by the mayor to investigate this accident, dated October 1, 1915, and I offer that in evidence.

The mayor's committee was composed of engineers drawn from the city service. They include J. W. F. Bennett, R. W. Greuzbaur, E. J. Fort, E. P. Goodrich, John R. Healy, F. W. Perry, A. L. Schaeffer, Merritt E. Smith, E. W. Stern, George W. Tillson, B. F. Welton, Chanler Withington and Nelson P. Lewis, who was chairman. These were drawn, according to the testimony which I have read, as being the best known engineers in the city service, and these are the gentlemen to whom Mr. Wallstein referred this morning in his testimony. The report says:

October 1, 1915.

Hon. John Purroy Mitchell,
Mayor of the City of New York:

Sir.— The Board of Engineers designated by you to examine and report upon the condition of the temporary wooden roadways and supporting structures in all streets where subway construction is in progress and the roadways are temporarily supported on other than permanent steel structures, submits the following report:

At our first meeting at the Bar Association on Sunday morning, September 26th, you instructed us to devote our attention, first to those portions of Broadway and Seventh avenue and the intersecting streets on which vehicular traffic had been suspended since the accident in Seventh avenue on the morning of September 22d, and the accident in Broadway on the evening of September 25th, reporting to you what changes in or additions to the supporting structures should in our judgment be made before traffic could safely be resumed thereon.

We at once divided into two parties, made an examination of the portions of Broadway and Seventh avenue above named, and reported the results of our inspection to you at 4:00 o'clock in the afternoon. After this report it was arranged that each of the two parties should be subdivided into two smaller parties and that on the following morning a systematic inspection should be begun of all of the other streets in which subway construction is in progress where roadways are being supported on temporary wooden structures. This last inspection covered all of Monday and Tuesday, and verbal progress reports have already been made to you. Our first purpose was, in accordance with your instructions, to determine what should be done in order to release crosstown traffic, first on those streets occupied by surface railroads, and afterward on other cross streets. The streets upon which traffic has been released after certain changes or additional work suggested by us had been carried out have been partially covered in our verbal progress reports, and in your

letters to the Public Service Commission. At the present time the only places where traffic is suspended are at 37th and 38th streets across Broadway; at 24th and 25th streets across Seventh avenue, and longitudinally on Broadway between 36th and 39th streets, and on Seventh avenue between 23d and 25th streets.

The inspection work of the four parties or sub-committees was arranged as follows:

Party No. 1 covered Broadway from 12th to 39th streets, Seventh avenue from 16th street to 34th street, and Canal street from Broadway to the approach to the Manhattan bridge. Reinspections of Broadway from 26th street northwardly have been made daily.

Party No. 2 covered Seventh avenue south of 16th street, Varick street, West Broadway, Greenwich street, State street Whitehall street, William street, Beekman street, and Park place.

Party No. 3 covered the work in the borough of Brooklyn, which is in Flatbush avenue between Dean street and the Plaza at the main entrance to Prospect Park, and the open cut work on Eastern Parkway.

Party No. 4 covered Park and Lexington avenues between 41st and 53d streets, 59th street along Central Park, and nearby sections of Seventh avenue, a small section of Lexington avenue just south of the Harlem river, and the work in the borough of the Bronx in 138th street, and Southern boulevard as far north as Hunt's Point road.

The observations and suggestions of these sub-committees will not be given in detail in this report. Many of them have already been carried out, and the engineers of the Public Service Commission in every case readily agreed to act upon the suggestions made to them. Where it was shown that the changes or additions proposed by the sub-committees would involve interference with the subsequent operations of the contractor, alternative suggestions were made by the engineers of the Public Service Commission or the contractors, which it was believed would accomplish the desired result, and in most cases these were agreed to by the sub-committees.

The general character of the supporting structures in the portions of Broadway between 26th and 39th streets and in Seventh avenue between Commerce street and 30th street is materially different from that found in other sections. The most conspicuous feature of these structures is the lack of rigidity in the transverse bents, which are commonly composed of two separate bents, the top horizontal member of each of which consists of a heavy "I" beam projecting beyond the vertical supports. These beams are not connected securely with each other, and they generally do not extend to the sides of the cut. There was little, if any, protection against the overturning of these beams in case of a longitudinal shock movement. With such method of construction diagonal bracing, both transverse and longitudinal, is very necessary, but we believe the type of structure originally used to be entirely unsuitable for the purpose for which it was designed.

On the sections of Broadway which were closed to longitudinal traffic we recommended the introduction of diagonal bracing at street intersections and in the middle of each block in such a manner as to form a rigid tower about ever one hundred feet, which would result in stiffening the entire supporting structure and tend to minimize the effect of any local disturbance. This work is now in progress and a considerable portion of it has been completed. Wherever the installation of diagonal bracing may involve serious difficulties in the erection of steel, the substitution for short distances of horizontal stiffening braces, if properly aligned and carried to and firmly secured at the sides of the cut, where dependable, may accomplish the desired result. In any recommendation as to diagonal bracing our idea is that it shall be applied with due regard to the clearances for inserting the steel of the finished subway structure, but we believe that convenience in erection should be subordinated to public safety.

On other sections of the work we have found occasion to make few suggestions or criticisms. The supporting structure is generally well designed and has been erected in a workmanlike manner. In some of the sections diagonal bracings were

originally introduced in the form of heavy timbers mitred to fit the principal members, and in other cases the contractor has recently, and without suggestion from us, added or is adding diagonal bracing.

In several places the sub-committee noted that there are long sections where the excavation has been completed, but the steel erection has not yet been commenced. In one instance the extent of the finished excavation was over 2,000 feet in length. We believe that it is unnecessary to assume the risk inseparable from such long stretches of temporary supports for the street surface, and that in the interest of safety to traffic which is being maintained on the street surface a limit should be placed upon the the extent of continuous temporary structure.

We believe that it is unreasonable to expect that traffic should be unrestricted, both as to loads and speeds, where the street surface is carried on temporary supports during the progress of subway construction. The adoption of the policy of maintaining temporary roadways during construction and at very great additional expense, was for the purpose of avoiding the entire suspension of traffic and the paralysis of business which took place on some of the streets in which the first subway was built. There must be some public inconvenience during this construction and such traffic restrictions as the police department has recently imposed on the recommendation of the Public Service Commission seem to us to be reasonable and we believe they should be continued.

Where the stratification of the rock and its unsolid character render a movement or falling of rock fragments at all likely, which conditions obtained at certain points on Broadway, notably in the vicinity of the later accident, the sides of the cut should be so protected by bracing, independent of the structure supporting the streets, that the safety of the latter should not be impaired by such movements of rock. We assume that the work recently done and now in progress by the Public Service Commission and the contractors will effectually guard against accidents of this sort.

We have pointed out certain changes in and additions to the structure supporting the temporary roadways and the sides of the excavation, as they existed at the time of our several inspections, which we believe to be necessary or at least prudent in order to provide a better insurance against accident. At the same time it must be borne in mind that conditions are constantly changing as the subway work proceeds and that a month or a week hence these conditions may be materially different. We wish, however, to emphasize the fact that in work of the character now being done and on such an extensive scale in this city in connection with subway construction, where street traffic is being maintained over deep excavations during the progress of the work, some risks must be taken which no study or skill can entirely eliminate. While great care and exceptional skill have been exercised in guarding against accident on the greater part of the work under way, our recommendations are intended to reduce still further the risk of accident to those using the public streets under which this work is being done.

We cannot close this report without including in it an expression of our appreciation of the facilities extended to us in our inspections by the Public Service Commission and its engineers and by the contractor, their readiness to adopt suggestions which we have made, the frankness and fairness with which they have discussed any of the details of those suggestions or recommendations which they believe would cause embarrassment, and their evident desire in all cases to arrive at some scheme which would accomplish the purpose which we had in mind.

Respectfully submitted,

J. W. F. BENNETT,
R. W. CREUZBAUR,
E. J. FORT,
E. P. GOODRICH,
JOHN R. HEALY,
F. W. PERRY,
A. L. SCHAEFFER,

MERRITT E. SMITH,
E. W. STERN,
GEORGE W. TILLSON,
B. F. WELTON,
CHANLER WITHINGTON,
NELSON P. LEWIS, (Chairman).

Testimony of Mr. J. WARD FOLLETTE; examination by Mr. Frank Moss. (Witness is sworn.)

Q. Mr. Follette, you were formerly assistant district attorney, were you not? A. Yes, sir.

Q. And you held that office at the time of these accidents in Seventh avenue and Broadway? You were designated by the district attorney to take charge of an investigation before the coroner? A. I was.

Q. You made application in the progress of that inquiry for the appointment of an expert, didn't you? A. I did.

Q. And in that application you made an affidavit which contained these words: "It is quite apparent that there were defects in such temporary work due to negligence on the part of some person or persons?" A. I believe so; it so appeared.

Q. And upon that request or application you were permitted to employ H. V. D. Parsons as an expert to assist the district attorney? A. Yes, sir.

Q. Was he a brother of Mr. Parsons, who is employed by the Interborough railroad? Isn't he a brother of the Parsons who gets $25,000 a year as consulting engineer for the Interborough — Dr. Parsons? A. I don't know. I don't know Dr. Parsons, and I never knew H. V. D. Parsons until he was employed.

Q. Who suggested Mr. Parsons? A. I think Mr. Perkins did.

Q. Mr. Parsons made a report, did he not? A. He did.

Q. And this is the report? (Holds up report.) A. Without reading it I should say that it is, because it looks like the same report.

Q. I will just put certain portions of this in evidence, Mr. Chairman.

Dated September 29, 1915, the accident is described. This relates to the accident at Seventh avenue. It says the primary cause was a blast. The actual cause of the collapse of the shoring was the sinking of the street at the northeast corner and the pulling down of the rest of the structure by the trolley tracks, which were continuous across the tops of the decks of the underpinning.

Further on, he says: "There were no diagonal braces used in the frame, which was purely vertical shoring. The structure is unquestionably sufficiently strong to support a load of over 600 feet of street surface at Sixteenth street."

Further on, he says: "Owing to the lack of support after the blasting the northeast corner of the street fell. This made the trolley tracks with their slot construction sag. The weight of this track pulled the various bents to the north, thus dislodging the system of construction. In consequence of the pull the bents folded on the transverse beams, the upper portions leaned to the north and by reaction forced the lower portions to lean to the south until the whole structure finally collapsed. The permanent steel work of the southern end was strong enough to stop the collapse."

He says diagonal bracing would have made the structure stronger. He says it is safer to introduce a certain amount of diagonal bracing so as to prevent a complete collapse such as occurred in this accident. He further says: "Had diagonals been used in this work, the collapse would not have covered such an extended area."

You had entire charge of this inquest testimony which is contained in this large volume, didn't you, Mr. Follette? A. Yes, sir.

Q. And previously to that inquiry before the coroner you took the testimony, or assisted in taking statements of a number of the workmen, didn't you? A. I did.

Q. Now, Mr. Follette, a number of the workmen who were engaged in working among the timbers testified to a shortage of timber; you remember that, don't you? A. I do; yes, sir.

Q. Their testimony practically agreed that there was a shortage of the timbering that was required to do this supporting work, didn't it? A. Yes, sir.

Q. And from your observation of these men as they made their statements, and as some of them testified in the coroner's office in the inquest, did you believe them? A. I did.

Q. You believed they were telling the truth? A. I did.

Q. When they said there was a shortage of timber? A. I did.

Q. Now, I have the preliminary statement of Mr. Conti, taken on the twenty-fourth of September, 1915. Not in court but in the district attorney's office. Mr. Conti was employed by the United States Realty and Improvement Company and worked there as a timber foreman, he said, under Tom Mitchell, as boss. This says that he was examined by Mr. Fifer. Was he a district attorney? A. He took some of the statements at various times when I was engaged in other matters, and they were always referred to me, however.

Q. Now this was Rafaelle Conti? A. I know who he is, because I talked with him, besides reading the statement that was taken by Mr. Fifer.

Q. The question was put to him there: "Had you ever said to Mr. Mitchell (that's the boss) that you didn't have enough timber in order to do the work?" A. "Yes." Q. "How many times have you spoken to him in regard to shortage of timber?" A. "Every time I had to pull a cross-beam up. I asked by the number. Sometimes he had to go down to Twenty-third and Twenty-second, between there; he went down and got the lumber." Q. "Well, then, have you always had enough lumber?" A. "As a matter of fact, I don't understand you." Q. "What I mean to say, you mean he went after it after you had spoken to him." A. "Yes, sir." Q. "After that did you have enough timber?" A. "No. We never had enough timber." Q. "Have you ever spoken to Midnight (that was the blasting foreman) to the effect that there was a shortage of timber?" A. "Yes. Sometimes I speak to Midnight that there was not enough timber." Q. "How often did you tell him about that?" A. "Plenty of times I told him." Q. "Was the shortage of timber such that, in your opinion, this entire shoring work was unsafe?" A. "Sometimes it was sawed six by twelve, then he put in three by tens. He doubled it up in its place." Is that so, Mr. Follette? A. Yes;

there were three by tens there where they had been spliced, besides making six by ten.

Q. Continuing the testimony: Q. "Did you always have enough braces?" A. "There was always a scarcity." Q. "How far back was the shoring?" A. "Back 150 feet; there was no bracing between the posts." Q. "What was wrong with the bracing?" A. "All the braces in the back were missing about 150 feet north of the solid steel construction." Q. "What did Mr. Mitchell say?" A. "Sometimes he sent me down to Twenty-third and Twenty-second. At the same time he tells me to take braces down right from where he was working and put it in another place, and I didn't want to do it." Q. "Why didn't you want to do it?" A. "Because I was afraid of danger." Q. "How many times did you take a brace out at his orders and put it up ahead?" A. "Five or six times." Q. "How many were not there that ought to have been there? Can you figure that out? In your opinion would the fact that there were no braces in that space be the cause of that entire shoring falling down? That wouldn't have happened if that had been braced up properly?" A. "Sure!" Q. "Do all of your men out here know that there was not enough bracing?" A. "My men used to hear me quarrel with the foreman when they used to insist on me taking down the braces, and I used to find fault because the job was too risky." Q. "Did you ever speak to any one else besides Mr. Mitchell about the shortage of timber?" A. "Sometimes I used to speak with Midnight, and he often agreed with me that I was right." Now, that was the statement of Mr. Conti. The statement of Mr. Messnor (or Midnight) was taken by Mr. Perkins, September 23rd. You were present, Mr. Follette? A. Yes, sir; and he was represented by counsel.

Q. Well, there was a question then whether Midnight was responsible for the blasting that he had conducted, wasn't there? A. Yes. He came in and surrendered himself to the office, with counsel.

Q. (Reads from testimony.) Q. "Well, Mr. Goldstein says he understood you overhead something about the shortage of timber?" A. "I heard that three or four times." Q. "When was the first time you heard that?" A. "The first time I heard that

was about the third day I was working there." Q. "Well, he had nothing to do with timber, he was a blasting man, but he heard about it." A. "He was a blasting foreman, and that's the statement he made." Q. "You had been working there three or four days when you heard some talk?" A. "The third day; we started in on a Wednesday and we were working Wednesday and Thursday. On Thursday night a man said he wouldn't work no more because he couldn't get any timber. His name was Salenti Schlelli." Q. "He gave up his job, you say?" A. "Yes, sir, because he couldn't get enough timber to put in." Q. "Did he come back to work?" A. "No, sir." Q. "What did they do when he chucked up his job?" A. "The walking boss told me he would get another man. I know him. He asked me if I knew of any man that could take the foreman's place, and I went and asked a friend of mine, a timber man. He was working there then. This man I went to see. I saw him about it, and he said, 'No, he didn't want to take the job because there was no timber there.' His name was Louis Zennotti. Then he asked me about another man working at timber. He said, 'Do you think that fellow would make any good?' I said, 'I guess so.' I know him by the name of Charlie. He only worked there about a week or two, and he chucked up the job because there was no timber." Q. "What did he chuck it up for?" A. "Because he didn't get enough timbers to put in." Q. "Then what?" A. "Then we got another man. I don't know his name. He worked two or three weeks. I don't know whether he left. He left the job, and then we got another man as foreman." Q. "Was that the one that was working there yesterday?" A. "Yes, sir. Frank Conti, I think it was." Q. "Did you ever hear him say anything about timber?" A. "I heard him Saturday. He was talking with the walking boss, Mr. Messnor. I heard him complain about twenty times about timber." Q. (By Mr. Perkins.) "Didn't they have timber enough there?" A. "Not to my knowledge. There were props enough there, but there wasn't enough sprainers, maybe." Q. "Can you explain what you mean?" A. "There is an I-beam every ten feet. I-beams are every ten feet, standing on edge, and then between them they put pieces like this. (Indicates smaller beams to brace and strengthen

the I-beam)." Q. "There weren't any of those back further?" A. "Not for five or six sections. There was a lot of them that had no braces in them. There were some braces near the place, but all of the I-beams didn't have braces." Now, Mr. Follette, you went into the excavation, didn't you? I mean after the collapse. A. Yes, sir.

Q. And you noticed how these braces were secured, where they were there — how they were secured against the I-beams, didn't you? A. Yes, I went into the place where the collapse occurred, and I went into the other sections.

Q. Well, were they fastened to the I-beams? A. Not that I could see.

Q. How were they put against the I-beam? A. Either rested upon cleats or wedged into place.

Q. By wooden wedges, that could be easily knocked out? A. Yes, sir.

Q. Looking at this yourself, seeing the location of the work and the way these braces were wedged in, did you come to an opinion that they could be very easily unwedged? A. I did.

Q. Well, then, they were not secure, as you could see with your eye? A. They didn't seem to be so secure as they would be if they had been fastened to the uprights.

Q. Did you learn that the blasts down there in the subway were not covered? A. I did. That was also brought out at the investigation.

Q. Was that one of the circumstances that the jury discussed when they found some fault with the Bureau of Combustibles? A. I don't know.

Q. But I thought you may have had some information about them? A. I was not in the jury room.

Q. Well, was the discussion about that in the open investigation? A. About the place not being covered?

Q. Yes. A. Yes, considerable testimony was taken on that subject.

Q. And didn't it appear that these heavy blasts that were fired in the subway underneath this temporary street were fired without any covering, so that great masses of rock would be knocked

out underneath there, with nothing to protect people above except the wooden floor? A. Yes, that was brought out. That wasn't generally known in the investigation.

Q. We had testimony this morning that that practice still continues. A. Yes, I heard that.

Q. Now, here is another statement of a man named Vincinni Blanda, taken by Mr. Fifer on September 24. He was a member of the timber gang: Q. "Do you know of your own knowledge whether any of the braces were missing in the shoring work?" A. "Yes, sir." Q. "How many were missing, so far as you know?" A. "Well, I took a good many of these braces down, but I was ordered to do so." Q. "Well, how many were not there that ought to have been there?" A. "Who knows; there were many missing." Q. "Have you ever heard Mr. Conti, your foreman, speak to Mr. Mitchell in regard to the fact that some of the braces were missing?" A. "Yes, I often heard my boss tell Mitchell, 'How can we go ahead, we haven't got any timber?'"

Then here's the statement of Farrero, taken by Mr. Fifer September 24. He was a member of the timber gang: Q. "Do you know of your own knowledge whether there was any of the braces missing because you had to take them down in one place and brace up another? Did you gather from the testimony of these men that they would take braces from one place where they were really in service and transfer them to another place which they were constructing?" A. "Those were spreaders between the uprights. They would take them from one place where they were in position and take them to another place." Q. "And that would leave the place without a spreader, which they had taken?" A. "That was the way that I understood it."

Then here is the statement of Romeo Cagnio, September 24, before Mr. Fifer: Q. "At the time of the accident were some of the braces missing?" A. "There were none missing where we were working, but below us there were some missing." Q. "Were there enough missing to cause the entire structure to fall down when the north end fell?" A. "Yes, there was."

Same sort of a statement from Michael Passiafuime.

Same sort of a statement from Anuni O. Blanda.

Same sort of a statement from Rosierius Asiragussa.

Same sort of a statement from Domi Ano Basticio.

And do you remember a statement of Stephen Caronski? He was one of the engineers.

A. I do; yes.

Q. He is an engineer employed by the contractor? A. I think I took that statement myself.

Q. In this you asked him, "In your opinion as an engineer, do you think it would have strengthened the structure to have had those fastened to the upright?" A. Well, I suppose if they did it would have helped some, but, as I understand, the stone struck the I-beam and pushed all the I-beams off the posts, or at least administered such a shock to the posts on top of the I-beams, that the beams were knocked off.

Q. On the ends of the I-beams they have a post that comes up and carries the horizontal twelve by sixteen, and if that is shot off, why that leaves the street unprotected regardless of whether or not the upright remains intact or not? A. Yes, sir. The car tracks come down on that and these I-beams are bolted together with these little beams between.

Q. You understood this to refer to the structure as they had been building it? A. I did.

Q. Do you remember the testimony of Midnight before the coroner, to the effect that some of his foremen left the job because of the danger and the lack of timber they needed? A. I am not sure, but if it appears in the minutes —

Q. Well, don't you remember that that was brought out — that foremen left their jobs because they feared the danger on account of the lack of timber, I think it was. A. Yes, sir.

Q. There was in your hands, Mr. Follette; in the district attorney's hands, the report of the mayor's committee? A. Yes.

Q. The report of the engineers? A. Yes.

Q. The report of the commissioner of accounts? A. Yes.

Q. The report of Engineer Rice and that of Engineer Enzian, both of the Bureau of Mines? A. Yes.

Q. Were either of those United States engineers called as witnesses before the coroner? A. They were not.

Q. Were any of the engineers of the mayor's committee called before the coroner? A. They were.

Q. Whom? A. I remember Mr. Lewis and Mr. Heeley. I don't remember whether there was one or two more called.

Q. I have examined the list of witnesses and I find you are correct when you state that the members of that committee called were just Mr. Lewis and Mr. Heeley, and no others. Now Mr. Nelson P. Lewis was in the employ of the city in what capacity? A. He was attached to the comptroller's office.

Q. Mr. Heeley was not an engineer was he? He was a member of the Bureau of Combustibles, wasn't he? A. I think he testified that he was an engineer, but he was attached to the Bureau of Combustibles.

Q. The Bureau of Combustibles was involved in the investigation? A. Yes.

Q. So that he was an interested party? A. Yes.

Q. Mr. Lewis testified that he had not personally gone through the Seventh Avenue subway, didn't he? A. I believe he did.

Q. So, of these thirteen engineers appointed by the mayor, two were called, one of whom was an interested person, and subject to the criticism of the coroner's jury, and the other of whom testified that he had not personally been in the Seventh Avenue subway? A. Yes, sir.

Q. Did you find out or did the district attorney find out what engineers of the mayor's committee had personally been into the Seventh Avenue subway? A. No; because it didn't appear on their report.

Q. Well, their report was put in evidence immediately in advance of the testimony? A. Yes, I put that in, if I may say so, so that I could use it in examining Mr. Lewis.

Q. It wasn't put in when Mr. Lewis testified, it was put in just before Mr. Davis testified? A. I don't remember when it was put in; I think it was put in before Mr. Lewis testified. You will find it as I have stated, I think.

Q. Was the United States Realty and Improvement Company represented upon that inquest? A. Yes.

Q. Did J. Parker appear as their counsel? A. He did.

Q. Did he take part in the inquiry? Did he cross examine witnesses? A. He did.

Q. Did he produce witnesses of his own and examine them for the United States Realty and Improvement Company; did he sum up to the jury? A. He did. That was by courtesy.

Q. The law gives no right for representation by counsel, does it? A. So far as I know, it does not.

Q. But Judge Parker occupied a good deal of the time in the investigation, didn't he? A. He did.

Q. And he produced an expert witness to testify substantially that the structure was all right? A. He did.

Q. And that expert witness was Mr. Davis? A. Yes.

Q. And Mr. Davis was a member of the engineering firm of Jacobs and Davis? A. I have forgotten his connection.

Q. Well, that's it. Did you know that Jacobs and Davis represent the people engaged in subway construction generally? A. I did not.

Q. Do you know that they are the engineers for Dunn; whether they have had anything to do with the questions that have been before this Committee in Brooklyn construction? A. I do not.

Q. And wasn't the report of the mayor's committee of engineers put in just before Mr. Parker called Mr. Davis? A. I don't recall.

Q. Well, you have forgotten about that. I was under the impression that it was put in before Mr. Lewis called. Did you discuss with the district attorney the calling of any of these engineers as witnesses? A. I think it was left entirely to my discretion.

Q. Well, you consulted with the district attorney, didn't you? A. He knew what I was doing; yes.

Q. Well, did you realize, Mr. Follette, that there were twenty-four employees of the United States Realty and Improvement Company called as witnesses? A. I didn't count them, but —. I don't know how many there were.

Q. Did Mr. Parker call on those people? A. All the men, engineers, of the United States Realty Company appeared and testified.

Q. And generally they said that their structure was all right? A. Yes; most of them would admit that it would have been stronger if it had been braced. Every engineer admitted that it should have been braced.

Q. But generally they made out a case for the United States Realty Company, as well as they could, didn't they, under the guidance of Mr. Parker? A. Well, I don't know. I think that they testified as they found the conditions.

Q. Well, they did the best they could. They were employed by the United States Realty and Improvement Company, and you representing the prosecuting bureau of the City of New York had all that weight to contend with, didn't you? And they brought in Mr. Davis, the eminent expert, who has had very much to do with the construction of tunnels? A. I didn't know his connection.

Q. Well, didn't it appear in his testimony? A. I don't think it came out specifically that he was interested in a particular thing; it may have, I don't remember that particular part.

Q. It said the engineer in charge of the Castoria Company, under Hellgate, said he built four tunnels under the Hudson river, connected with the Pennsylvania Railroad tunnel; designed and constructed difficult piece of the Fourth Avenue and Brooklyn under the Hudson river. A. I am consulting engineer to the Brooklyn Rapid Transit and New York Railways.

Q. You saw, then, that he was related to the railroad work? A. I don't remember what particular facts he testified to. He just completed the seventeenth section of the Rapid Transit in Brooklyn. The reconstruction of Fourth avenue.

Q. Against the testimony of Mr. Davis and the testimony of a half dozen other engineers of the United States Realty and Improvement Company, whom did you have to offer as experts? A. We had Mr. Parsons engaged as an expert and I used the Public Service Commission engineers and their connection with the work also, and their opinions.

Q. Weren't the Public Service engineers on the defensive? A. Somewhat they were.

Q. Didn't some of them struggle pretty hard on the defensive? A. I think they did, yes.

Q. And when the coroner's jury put in that last clause there in which they gently touched the Public Service Commission, didn't you understand that that was meant to be a disapproval of the way the Public Service Commission had supervised this work? A. I thought that was the way they had intended to do.

Q. Well, now, you had then against this array of engineers for the Real Estate Company your own engineer, Mr. Parsons, and you had the Public Service engineers. A. Yes.

Q. Now, when Mr. Parsons stated that the structure would have been stronger with bracing, he hung a good deal to the idea that the sagging railroad tracks had pulled it down, didn't he? A. He seemed to imply that in his report.

Q. Well, there was no intimation of that in the report of the engineers to the mayor? A. I don't think there was.

Q. And there was no intimation of anything like that in the United States government's report, was there? A. I don't think so.

Q. He stood entirely alone on that, didn't he? A. I think so. You might talk with some of the Public Service engineers. They had an idea that that might have added somewhat to the weight.

Q. They were on the defensive, and to that extent Mr. Parsons was some little comfort to the defense? A. Possibly.

Q. (By Mr. Thompson.) What do you mean by the surface tracks had been sagging before this accident? A. As the decking started to fall, the railroad tracks then began to sag and pulled down the remaining bents that were standing.

Q. (By Senator Thompson.) Well, they hadn't been sagging before the accident, so there wasn't any claim that the sagging tracks made the accident. I don't see how that can be comforting to any one.

Mr. Moss.— Well, the way that some of the Public Service engineers grasped at that little straw showed that they thought there was some comfort in it; but you recognize that the testimony of your expert, Mr. Parsons, did help some as a comfort in that particular?

Now, you yourself thought, did you not (I think you have so expressed it to me) that the structure should have been built with

a realization that on the planking above were these railroad tracks which must be carried and supported? A. Certainly.

Q. And because of the weight of the railroad tracks up there and the tendency to pull because they are joined together, there was just so much the more need for making a rigid structure underneath, wasn't there? (I think you expressed that.) A. That should have been taken into consideration.

Q. Well, now, Mr. Follette, you had at least eleven men on that engineers committee, who, by their report to the mayor showed that they could have been called in to support a criticism of the structure,— why weren't they called? A. Their report, as I remember, was prefaced with the statement that they were assigned to investigate the work, to determine whether or not there were any recommendations with the view to strengthening it, and the report was submitted in the whole, signed by all the members, and taking it for granted that that was what they had and met for and had investigated the work for, according to their preface, the report was introduced as a whole, and that was the reason that I introduced it.

Q. Well, why did you call Mr. Lewis at all? A. Some one suggested that Mr. Lewis be called. I have forgotten whether it was one of the jurors asked if he might call Mr. Lewis and hear what he really had to say, and then Mr. Lewis was sent for.

Q. Well you found this: That Mr. Lewis had had no practical experience in subway work, didn't you? A. Yes, sir.

Q. Did you look to find some one upon this committee who had had more experience in subway work than Mr. Lewis had had? A. I think that it was brought out that there were none of them who had so far as we could find out had any experience.

Q. Hadn't Mr. Goodrich been connected with the Civil Service Commission? A. I don't remember that he was.

Q. Why he certainly was, and isn't Mr. Goodrich the chief consulting engineer of New York? A. I don't know.

Q. E. P. Goodrich in receipt of two salaries of $7,500 each came over from the Public Service Commission; introduced by Mr. McAneney into the government when he was in office; the chief consulting engineer of the city ever since that time, and

practically the head of the force. He brought over with him from the Public Service Commission engineers. A. That may be; but I don't know them.

Q. No one brought to your attention the eminent qualifications of Mr. Goodrich?

Mr. Follette, you were impressed with the testimony of these Italian timbermen to the effect that there was a shortage of timber, weren't you? A. I was.

Q. And so was Mr. Perkins, wasn't he? A. Yes.

Senator Thompson.— If there was a shortage of timber, what these men have testified certainly was criminal negligence on the part of the company? A. I wouldn't say that it was criminal negligence on the part of the company unless it could be shown that that of itself was the cause of the collapse.

Senator Thompson.— Well, that was shown to be the cause of the collapse, wasn't it? A. Not conclusively.

Senator Thompson.— It was shown that there was a shortage of spreaders and timbers. It was also shown that if that hadn't happened there would have been such an extensive collapse? A. It was brought out that that probably did add to the collapse, but that was not really the cause of the collapse.

Senator Thompson.— Well, if that was the cause of the collapse, it would certainly have been criminal negligence not to have furnished the timber. There would have been no doubt about that. You rely on these coroners' juries in cases of that kind. Whatever the coroners do you have a right to go to a grand jury and indict them? A. We did that.

Senator Thompson.— But you didn't try to do anything in this case? A. There was no grand jury investigation.

Senator Thompson.— If there was a shortage of timber and that caused the accident, the Public Service engineers on the job would also be guilty of criminal negligence, would they not? A. They probably might be connected with the negligence.

Senator Thompson.— If they had a duty imposed upon them to inspect that work and passed it as satisfactory?

Q. (By Mr. Frank Moss.) Did you confer with any Public Service Commissioners? A. I conferred with Commissioner Haywood for the purpose of getting any records that he might have that would assist me in my conducting of the investigation.

Q. Did you talk with Mr. Haywood about the evidence? Did you let him know what evidence you had? A. No, I did not.

Q. Well, did you talk with him about the progress of the investigation? A. No.

Q. Where did you see Mr. Haywood? A. I called him at his office and made an appointment with him, and he subsequently called me and met me at the Franklin side of the district attorney's office. The Franklin side of the building, Criminal Courts' building, with his car, and I told him what I wanted, and the next day the records were in the district attorney's office.

Q. Had Mr. Haywood consulted with the district attorney at the district attorney's office? A. I don't know. I wasn't present, and I don't think I was ever informed that he was.

Q. Well, now Mr. Follette, I read to you the names of the Italian workmen who testified to a shortage of timber. A. Yes, sir.

Q. How many of those were called before the coroner? A. There were about four, I think. Midnight was called, Conti was called, Blanda was called and Basticio was called,— they were the four. They were called because they seemed to be the most intelligent of all, and particularly Mr. Conti, who was the foreman.

Q. But you didn't call the majority,— five were not called? A. No, sir.

Q. Was there any reason for not calling the other five? A. It was simply a matter of obtaining testimony, and these seemed to be the best informed of all.

Q. And two of those four would be liable possibly as defendants? A. Yes.

Q. Messnor was in attendance with counsel? A. Yes.

Q. Midnight's testimony might not weigh so heavily because of his interest,— possible interest in it? A. Yes, sir.

Q. Conti also? A. He was not present with counsel.

Q. Well, there was a finding against the Bureau of Combustibles or very severe criticisms in language. Was anything done by the district attorney's office on the basis of that criticism of the Bureau of Combustibles? A. You mean for future investigation?

Q. Yes, sir. A. Not because the defendant came under the province of the district attorney; it would if it was a criminal proceeding but not subsequent.

Q. Well, if they had neglected to take proper precautions and as a result lives were lost, wouldn't they be liable to prosecution? A. But I say subsequent to the collapse as to what the Bureau of Combustibles did.

Q. I am not talking about the Bureau of Combustibles, I am talking about the prosecuting department. Nothing was done? A. Well, now, this coroner's inquest was a very thorough investigation. It brought out all that could be said for the structure, all that could be said for the United States Realty Company, and at least some of what could be said against them.

Q. Wasn't any other step taken by the district attorney's office to settle the question of criminal responsibility? A. Yes.

Q. What was done? A. I talked with Mr. Wallstein; I went over his records with him and had his records, and at the time I talked to Mr. Wallstein he called to my attention the report by the United States mining engineers, and told me that that had been confidentially made to him.

Q. Well, you knew that the United States engineers had been talking with Mr. Wallstein before you closed the coroner's inquest, didn't you? A. Yes, sir.

Q. And you knew you didn't have that testimony before the jury, didn't you? A. I did.

Q. And did you not know that the jury neglected to make any finding against the sub-structure because of the effect of Mr. Davis' testimony? A. I don't know what weight they gave to it.

Q. Didn't you learn from conservation with any members of the jury that the testimony of Engineer Davis determined them not to make a specific finding against the United States Realty and Improvement Company? A. No, because I didn't talk to any of them.

Q. I say, Mr. Follette, that that has been our information, because we have been looking it up from some members of the jury, that they were impressed by the testimony of Mr. Davis. Now, in the investigation before the jury, was it brought to their attention that Mr. Davis had a possible interest in being the chief engineer of the Rapid Transit Company? A. I don't think that it was.

Q. You realized that Mr. Davis' testimony was naturally of some weight with the jury, didn't you? A. The same as any well-known engineer.

Q. And you realized that Mr. Parsons' testimony at least stood in a class by itself, didn't you? A. I didn't know to what extent Mr. Parsons was known throughout the city. I didn't know how well known he was.

Q. Well, why didn't you take some steps to bring out before the jury by engineering testimony the criticisms that you knew had been made by the engineers of the mayor's committee and by the engineers of the United States government so as to offset the testimony of Mr. Davis? A. Because we were authorized only to employ the one engineer, and we did employ him, and Mr. Wallstein told me that that report by the United States engineers had been made in confidence to him.

Q. Well, he didn't tell you that those engineers would not testify as individuals? A. I believe that he so intimated.

Q. Well, did you endeavor to get that testimony by communicating with the authorities? A. To have them appear?

Q. As witnesses? A. No, I did not.

Q. And the engineers who were on the mayor's committee were already in the city government. You could have gotten them and used their report. Didn't you know that there was a sub-committee of the mayor's engineers that reported especially on the Seventh avenue accident? A. I know that there were some who went over there especially and reported on that.

Q. Didn't you make any effort to get those men to testify? A. I simply used their report as a whole for the purpose for which they were appointed.

Q. What good is a report in writing, signed by thirteen men when testimony is being made up upon the strength of witnesses? A. It is worth the purpose for which they made the report.

Q. You wouldn't expect to hold anybody for crime to the report that wasn't produced by a witness? A. In the placing of responsibility to anything that might have amounted to criminal negligence, I could not see wherein the engineers themselves could add anything to it.

Q. The mayor's engineers had reported that there was a defective sub-structure. Now, don't you think if the mayor's engineers had been put on as witnesses to controvert the position of Mr. Davis, that they might have influenced the jury to bring in a verdict against the contractors? A. I don't think so.

Q. Well, it is possible? A. It may have been possible; I couldn't say whether it was or not.

Q. Well, every step you took, Mr. Follette, you discussed with your superiors, didn't you? A. Practically.

Q. Your superior knew what witnesses you were calling, didn't he? A. Yes, sir.

Q. And if you should have called more, he was perfectly competent to tell you so? A. I think that he asked me and left it to my discretion as to whether or not I thought that any witness would add anything.

Q. Well, I simply want to get the facts. I don't mean to reflect upon anybody. I want to be very careful, but I just want to get the facts to show who were the people who were directing this matter. Was any inquiry had before a grand jury? A. No, this matter was not laid before any magistrate, only before the coroner.

Q. I understand that; but it was not laid before any police magistrate, not laid before any grand jury, and the matter died out right there, didn't it,— in that coroner's verdict? A. So far as the investigation was concerned.

Q. There was no more investigation after that verdict was there? A. I had several talks with Mr. Perkins after that.

Q. But I mean getting of statements from witnesses, there was absolutely not another thing done, was there? A. I can't say.

Q. Well, now, so far as you know, Mr. Follette, nobody has been accused of crime? A. No, sir.

Q. Nobody has been disciplined or put under charges in the fire department? A. No, sir.

Q. Nobody has been put under charges of discipline in the Public Service Commission? A. Not so far as I know.

Q. Do you know whether anybody lost his job? A. I do not know that either.

Q. Well, Midnight lost his job? A. He quit; it was too much for him.

Q. Did you submit any written report on this matter to Mr. Perkins? A. No, I discussed it.

Q. What was the conversation? A. With reference to the grand jury.

Q. What was the reason assigned by Mr. Perkins at that time for not submitting it to the grand jury? A. They went over and discussed evidence as was brought out in the investigation, and in fact all the facts that I have been able to ascertain either through the investigation or by examination of witnesses or through conversation with persons outside, and the weight and strength of the testimony brought out whether there was anything new that could be added that would fix the responsibility of criminal negligence upon any one, and after discussing those various points people came to the conclusion that there was an insufficient amount of evidence to submit to the grand jury to warrant the finding of an indictment.

Q. Then, plus the evidence, you also submitted to your superior all these reports of the different engineers and of the United States engineers and of the city engineers? A. Those, I think, were submitted to Mr. Perkins, and he passed them on to me.

Senator Thompson.— So you think you couldn't have gotten a testimony if you presented these,— you couldn't have gotten an indictment? They must have funny grand juries.

Q. (By Mr. Moss.) Now, I want to put upon the record while you are on the stand the names of the witnesses that were called before this coroner's jury, with a statement of who they were with and what they represented. There were ten witnesses called, whom I won't name, who were merely eye witnesses of the accidents from the street. Then came Zuzeppi Masadoni, a drill runner, and, incidentally, Zuzeppi added his testimony to the testimony of the others that there was a shortage of timber. Then there was

Joseph Syoon, the powder monkey; August Midnight, blaster; Uberto Gerardi, drill runner; John Mann, car driver; C. W. Gerardi, drill runner; Peter Drier, a watchman for the United States Realty Company; Rob Ridgeway, engineer of the Public Service Commission; Thomas Mitchell, shaft boss of the United States Realty Company; R. Conti, the timber boss of the United States Realty Company; Walter Hughey, foreman of the United States Realty Company; John H. Healy, inspector of combustibles, fire department; A. W. Pote, inspector of blasting, fire department; Selesten Cebulle, timber foreman, United States Realty Company; Sebugi Zannoti, a timber foreman; Charles Snere, a timber man; Henry Snyder, a surveyor of the United States Realty Company; Harry S. Jones, an engineer of the United States Realty Company; Thomas C. Mott, called by Mr. Parker; Andrew Veach, Jr., Public Service Commission, who was immediately responsible; John Kelley, inspector of blasting of the fire department; Faust B. Otter, a shaft foreman of the United States Realty Company; Stephen Caronski, a Public Service Commission engineer of immediate responsibility; Nelson B. Lewis, of the mayor's committee; H. Parsons, district attorney's expert; Myers, Public Service Commission engineer of immediate responsibility; W. S. Kinnear, president of the United States Realty Company; Richard Babbage, vice-president of the United States Realty Company; Paul Starrett, vice-president of the United States Realty Company; Charles E. Herman, director of the United States Realty Company; Byron M. Fellows, director of the United States Realty Company; Hans G. Cubco, engineer of the United States Realty Company; Charles R. Stengel, engineer of the United States Realty Company; Walter J. Johnson, superintendent of the United States Realty Company; E. A. Littel, engineer of the United States Realty Company; E. Zobrandi, laborer of the United States Realty Company; D. Vostiko, the same; John C. Davis, expert on behalf of the United States Realty Company; Harry W. Parsons, pipe-fitter of the United States Realty Company; Arthur Beaumann, superintendent United States Realty Company. Then came a speech by Mr. Parker and a speech by Mr. Follette and a speech by Mr. Cummings. You see as you read those names, Mr. Follette, that they are pretty nearly

all United States Realty Company people. A. The testimony of some of the employers were merely perfunctory.

Q. Well, why did you allow the testimony of these men if it was perfunctory? A. It gave me an opportunity to cross-examine.

Q. Did you do any cross-examining? It doesn't show anything that you did. A. No, sir.

Q. Don't you think, Mr. Follette, that the calling of all of those important gentlemen of the United States Realty Company was making the transaction pretty hard on the government? A. I don't think so, because those directors testified that they had never seen the work.

Q. But they testified pretty generally that they were a good company and were doing things the best they knew how, didn't they? A. I think that that may have been done.

Q. And every one of those men had his influence outside as well as inside? A. Probably.

Q. They were nice-looking gentlemen.— was there anything to be gained to the government's cause by calling them? A. I didn't see that anything would be lost.

Q. Don't you think that those men with strong personalities would impress the jury? A. They didn't testify to anything with reference to the facts of the case at all.

Q. Then what were they called for, if it wasn't to allow their personality to flow out and affect the jury? Do you think that Mr. Parker called those men without an object? A. Simply to show that they probably feared nothing at all and that they came there ready and willing to be examined.

Q. Were you trying, Mr. Follette, to have anybody held by the coroner's jury? A. I was endeavoring to bring out the facts of the case just as fully as they could be brought out, and if there were any facts brought out fixing the responsibility against whom the facts showed there was a responsibility.

Q. You believe, as you told us to-day, that a very large cause of that accident was the sagging of the sub-structure that wasn't properly put up,— that is, the lack of proper spreaders in place; that that structure wasn't put up to stand what was put against it, at least it wasn't calculated to do it? A. It would seem from

an examination of the collapse and from talks with the engineers that they were probably of the opinion that it would have been strengthened probably had there been more spreaders used.

Q. Weren't you of the opinion that the men who designed that sub-structure never intended that it should be run over ahead of permanent work? A. I think probably that may have been the intention, that it should not have been run over ahead of permanent work.

Q. It was never intended originally to withstand such a shock as it was put to? A. I think that probably was the idea.

Q. Now and then, too, there was the question of how far the accident was caused by the removal of timbers from place to place because there was a shortage of timber? A. Yes.

Q. Now those were two points where you might hope to present a case to a jury involving some elements of criminal negligence? A. But there was a great deal of conflicting testimony.

Q. But to have held somebody would have given you an opportunity to gather your evidence together and try it out in court, wouldn't it? A. But there was nothing to prevent me gathering the evidence.

Q. How did you expect in as delicate a situation as that to get a coroner's jury to bring in a verdict, which were allowing Mr. Parker rights that he was not entitled to under the law, and allowing him to bring important and impressive men with no particular reason to take the stand and throw weight against a holding by the coroner's jury? It is also stated that the law doesn't even provide for representation of the district attorney before the coroner. A. I was there by courtesy.

Q. But how did you expect to get the jury to find a verdict that would give you a standing in court if you allowed Mr. Parker to impress the jury with these gentlemen one after the other, important men in the community, who were called for no other reason? A. We were both there by courtesy; I was not in charge. I was there simply as a representative of the district attorney, conducting the investigation.

Q. The coroner didn't tell you you had no rights? A. I was then told by the coroner that I had no rights?

Q. But you weren't told that? A. I knew it.

Q. But you knew the coroner wasn't raising an objection, didn't you? A. No.

Q. Practically you had just as much right there as you would have had in the court of law? A. Probably if the point had been raised.

Q. But who was going to raise the point?

Mr. Feinberg.— The fact of the matter is that at coroners' inquests the district attorney is represented, the attorney for the defendant is represented and in some unusual cases they do allow the introduction of evidence on behalf of the defense? A. Yes.

Q. And this was one of those cases? Do the usual rules of law obtain in the coroner's court? A. So far as the admission and rejection of testimony?

Q. Yes. A. It doesn't seem to.

Q. And did you object to any of this testimony being offered? A. I did not because I couldn't see that it had in any way overthrown the actual testimony.

Q. (By Mr. Moss.) Was there any disinterested testimony offered against criminal liability? A. All the testimony was offered with reference to the conditions and the cause of the accident that could have been offered with the exception of calling probably a few more witnesses.

Q. Now referring to one or two of these witnesses whom you had not examined in private examination, who testified for the first time before the coroner, were those Italians? A. Those were men concerning whom I had talked to Mr. Conti, so that I knew who they were and what they knew.

Q. Here is Cellibi, timber forman: Q. "You worked for them for two days?" A. "Yes, sir." Q. "Why did you only work for them two days?" A. "I go down on the job there; I see that there was no timber on that day there when I started to work. I told Mr. Mitchell to try and bring me some lumber, some timber. Mr. Mitchell says to me, 'All right.' I was down the second day; it was the same thing. I said to Mr. Mitchell, 'I need some timber here. I cannot go ahead no more.' 'Don't you be in a hurry,' Mr. Mitchell said, 'the timber is coming.' Yesterday I wait there all day and the timber don't come. I thought I had better leave the

job and I went away. I told Mr. Mitchell that night, I said, 'the timber don't come yet.' Mr. Mitchell said, 'Well, the timber is coming to-morrow, and after to-morrow,' he said, 'you can go ahead and start to work.' He said, 'You get $4.50 a day, what are you worrying about?' 'I can't do nothing if I got no lumber to do it with, and I will go to my old place that I am working for.' That's all I can say for two days on the job."

And Zennoti, he says he worked there two months. He says that he told Mr. Mitchell he was going to leave. "I told him when I quit — now he didn't ask me nothing, no — the job did not go right. I go where I want. I wanted to be sure in the tunnel. Q. "In other words, you wanted to be safe in the tunnel, is that right?" A. "I don't understand what 'safe' means, no." Q. "Well, you want to be sure in the tunnel; do you mean that you want to be safe there?" A. "Yes, sir; I was afraid to work there." Q. "Why were you afraid to work there?" A. "I see how it is coming out." Q. "What do you mean? Were you afraid that the timbering had anything the matter with it?" A. "Sure." Q. "What did you think was the matter with it?" A. "They had no timber all the time. There ought to be timber there. Everybody looking for timber and nobody got it."

And Charles Zenneri: Q. "Did you tell Mitchell that you were going to leave because of the shortage of lumber?" A. "I tell him that I cannot do it. I said one day, 'Mr. Mitchell, I need timber.' I needed some timber for the cross pieces. I needed timber for the cross pieces. He sent me five times another day. I asked for timber again and then I got it. I got the I-beam. Then he said, 'Take them out on the backing down on Twenty-second street.' Then I must take them out from the I-beams. I told him I don't want to take them out because it would make it dangerous. That is all I said to him." He worked six days as a foreman, then he got out.

Q. Well, Mr. Follette, you didn't remain in office a great while after this coroner's inquest — you didn't remain a great while. A. No.

Q. When did you go out of office? A. The 1st of January, 1916.

Q. And Mr. Perkins, also? A. Yes.

Q. And this inquest ended in the latter part of October. A. It was around that time.

Testimony of Mr. FOLLETTE; questions by Mr. Feinberg.

Q. What was your personal impression of the testimony that was submitted to you, or rather as to the cause of the accident? Was it the result of a series of negligent acts or was it the result of a lack of judgment or the supervision of the construction of certain things? A. It seemed to me, from the reports of various engineers, it was a matter of opinion on their part that it was a lack of proper judgment in the adoption of the particular plan. That was the conclusion that I drew from their reports.

Q. Did you give any weight to the testimony of the Italians who were practical shorers and timberers? A. Oh, yes.

Q. And Mr. Moss's repetition of their testimony of the insufficiency of timber — didn't that appeal to you more than the lack of judgment? A. The question of insufficiency of timber didn't appeal to me so much as it did of the lack of the timber that was placed in the work. The insufficiency of the timber for timbering of the work might not have been negligence. It simply might stop or interfere with the progress of the work — not having sufficient timber. But the mere fact that spreaders or drains were removed from some parts of the work and placed in other parts of the work didn't cause —

Q. Did you think by the exercise of ordinary human foresight that this accident could have been avoided? A. I don't think that anyone could have prophesied or could have seen that this accident was about to occur. I don't think that there was anything not done that should have been done to prevent it.

Q. These Italians seemed to see that. A. They seemed to feel a little afraid.

Q. Their fears were based upon the fact of this insufficiency of proper shoring? A. Those spreaders were taken out. Many of them in this testified that they were afraid.

Mr. Moss.— That is all, Mr. Follette.

Mr. Moss.— Mr. Babbage, when he was here this morning was requested to send information. He sent this letter, the facts of which I read into the record. R. G. Babbage.

William F. Havemeyer was a director of the United States Realty Improvement Company for a number of years prior to his death, which I believe occurred in the fall of 1913. According to the transfer books he acquired 100 shares of the stock of the company on February 23rd, 1906, and continued to hold those 100 shares until September 29th, 1913, at which time they were transferred to William Keller.

Mr. Follette.— Mr. Moss, might I have it appear upon the record that during the investigation before the coroner that there was in attendance here nearly all the time, Mr. Smith, the counsel, Mr. Lawson and one of the members of the Committee on many occasions and Mr. Thompson on several occasions; and that I was ready and willing at all times to take suggestions from them and confer with them; and at any of these points if criticism had been brought to my attention at that time I would have been willing to take them up, as I did act on many suggestions made by them.

Mr. Moss.— Mr. Feinberg says that is all right.

Mr. Feinberg.— Sure.

Mr. Moss.— Mr. Schaeffer.

Mr. Schaeffer is sworn by Chairman and takes the stand.

Mr. Follette had left hearing room, but on request of Mr. Moss is brought back.

Mr. Smith.— I wanted you to say that it was only fair to put on the record that while your statement is true, it is also true that neither Senator Thompson nor Senator Lawson or myself had any knowledge of these reports. Thank you.

Mr. Follette.— Yes.

Testimony of Mr. SCHAEFFER.

Q. (Mr. Moss.) Mr. Schaeffer, you are one of the consulting engineers in the office of the treasurer of the Interborough? A. Yes.

Q. And you were a member of the mayor's committee which investigated subways last fall? A. Yes.

Q. And were you one of the members of the committee that examined Seventh avenue between Sixteenth street and Christopher street? A. Yes.

Q. And you have just handed me a copy of your report. This is a true copy of the report to Mr. Lewis, the chairman of the committee? A. Yes.

Mr. Moss.— Now, under this heading of "Seventh Avenue, between Sixteenth Street and Christopher Street," I read a portion of this report:

> The great depth of the steel I-beams and the insecurity of the fastenings at the tops of the posts upon which they rest, make them liable to overturn under the effect of any considerable disturbance of longitudinal forces. There seems to have been little or no provision made to guard against that contingency, unless the small horizontal struts which are placed longitudinally between the channel-beams connecting the ends of the I-beams may be considered to have any value in this respect. It does not appear, however, that these struts were intended to serve this purpose, but that they were rather introduced as stiffenings or separators to prevent any buckling of the channel between connections.
>
> It is the opinion of your committee also that there was danger of splitting the wooden posts upon which these steel I-beams rest should an extraordinary load be imposed upon them. It is therefore recommended that all of the I-beams which are now incorporated in the temporary structure be substantially braced against overturning, and that the use of steel beams of this depth for this purpose be discontinued in future subway work. Wherever it may be considered desirable to use steel beams in the temporary structure on account of their adaptability to carry cantilever loads, the committee

would suggest that two beams of shallower depth firmly butted together with the wooden separators between them would answer the purpose more effectively, inasmuch as a better bearing would be obtained on the top of the upright posts and that they would offer greater stability against lateral overthrow.

It is also recommended that a system of longitudinal and transverse bracing be added; not so much to withstand the pressures which normally act upon the structure but to guard against accidental disturbance of any present equilibrium.

It is further recommended that the usual precautionary methods of sounding and scaling the faces of rock cuts be conducted with special care, and that independent racking struts be introduced at all points where the nature of the rock would seem to indicate any possibility of sliding or falling.

Q. Most of this relates to further downtown? A. Yes.

Mr. Moss.— I think that is all, Mr. Schaeffer. Take this back. (Returns report to Mr. Schaeffer.)

Testimony of R. WALTER CREUZBAUR.

Mr. Creuzbaur is sworn and takes the stand.

Q. (Mr. Moss.) What is your position at this time? A. I am consulting engineer of the Interborough; formerly in the city service.

Q. What was your position in the city service? A. I was consulting engineer of public works.

Q. And you were one of the mayor's committee? A. I was the outside man.

Q. Oh, I see; you were not one of the city engineers at that time. Well, now, you were one of a sub-committee, consisting of E. P. Goodrich, yourself, and E. J. Fort — all, I may say, well known engineers? A. Yes.

Mr. Moss.— And I read the latter part of the report, a copy of which you have handed me:

It was also recommended that vertical and horizontal racks and heavy struts, well posted, wedged and clamped in place, should be installed across the drift under the hoisting tower at the northwest corner of Broadway and 38th street. This recommendation is in line with previous portions of our report relating to the danger at such corners where rock with the same dip in it was found by the committee.

It is the opinion of this committee that the scheme of timbering used in Broadway between 26th and 39th streets, and in Seventh avenue between Commerce and 30th streets, is not the best that might have been selected, for the following reasons:

While the vertical loads to be carried are fairly well known and can be provided for, horizontal thrust from rock slides, surface traffic or other causes cannot be forseen with certainty. And it would, therefore, seem to be prudent to so arrange the timbering as to provide as great resistance to such forces as possible; not with the idea of preventing rock slides entirely, because it is understood that this is not always possible; but of localizing the effects of them and preventing the probable collapse of any part of the street decking, and certainly of long stretches of timbering, such as occurred in Seventh avenue between 23rd and 24th streets. This scheme of timbering does not seem to have been designed to meet these requirements. Vertical posts were made continuous in one piece from the sub-grade to the I-beams supporting the street surface; and all horizontal bracing is of comparatively short timber butted against these long posts. This scheme is no doubt very advantageous for the contractor, because it enables him to easily clear away all the timbering which interferes with the erection of steel for the permanent structure; but it omits the heavy horizontal beams which on other types of structures are made continuous across the whole width of the cut and are accurately fitted and secured, stayed, longitudinally, and which can be relied upon to localize the effects of rock slides or other accidents.

It is also our opinion that in a number of particulars in addition to the above this scheme of timbering fails to provide sufficient horizontal resistance and is open to criticism

on that account. Traveling steel needle beams, which are used in rock headings, are not, in many cases, pushed far enough beyond the working face to provide proper support upon solid rock. Horizontal braces are frequently found butted against 24-inch steel I-beams at the top of such beams on one side and at the bottom on the other side. No stays are placed on the sides to prevent the tendency to overturn, and as a result when large horizontal forces in the direction of the street occur, little or no resistance to overturning on the part of these beams can be counted upon. These transverse I-beams do not extend continuously across the whole butt, but are spliced in the center for a distance of approximately eight feet by two comparatively small channels, which are bolted through at each end by four small bolts. This method of connection furnished a joint, and adds little to the stiffness of the structure.

The committee is of the opinion that if the use of the 24-inch I-beams is continued, means should be found for securing them against such overturning movements as are likely to occur near headings; where these transverse I-beams are still hung in pairs in stirrups from the traveling needles and do not rest or abut against the rock and are not connected by clamps at the center panel the danger of displacement in the immediate vicinity of blasting or from any one of a number of causes is obvious.

We also wish to note the defective methods of installing struts and racking timbers designed to support uncertain rock, earth banks and foundation walls, and to resist lateral thrust where such timbers are braced against columns which support street decking; also the absence of posting between and under ranges which retain earth or loose rock, and the absence of reasonable precautions against small slides or blasting adjacent to outer columns. Frequent instances of support of heavy posts upon shattered rock above the elevation of sub-grade where the excavation had generally been completed to sub-grade must also be condemned as precarious.

Mr. Moss.— I think, Mr. Creuzbaur, that this summarizes what I might ask you in testimony very well.

Mr. Creuzbaur.— Mr. Moss, I drafted this report for the committee as herewith, and then for the mayor I simply summarized what was reported on by the committee, by the city engineers besides myself. Now, the mayor has that memoranda, which is very brief, but as our sub-committee happened to cover the sections where the trouble had occurred in this Real Estate, I think that that report is concise enough, and I may say right here, it is an absolute contradiction of Mr. J. V. Davies' statement on behalf of the contractors.

Q. (Mr. Moss.) Yes. You have read Mr. Davies' statement? A. I read his statement before the coroner.

Q. Yes. In the coroner's inquest; you are familiar with his testimony? A. Familiar with his conclusions.

Q. And your conclusions are diametrically opposed to his? A. Absolutely, as that report states.

Q. Now, if you had been called as a witness, your testimony would have at least met his testimony, wouldn't it? A. Yes, it would have been opposed to his testimony.

Q. And the members of your sub-committee would have been with you? A. Oh, yes; absolutely.

Q. That is, the testimony of Goodrich, Fort, and Creuzbaur, already in the employ of the city, would have met the testimony of Mr. Davies, and would have been three to one on the main contention? A. Well, the other members of the committee were of one mind in the conclusions that we drew there. That is —

Q. Yes. That is, the whole thirteen stood on the conclusions which you reached, you having the advantage of the personal inspection? A. And I would say right here that wherever there were any questions of judgment, we called in other members of the full committee, of twelve, to look at these points that we considered important. We were all working in harmony and made an unanimous report of these findings, and I wondered that the city engineers — I am not a city engineer, I am an outside engineer — I wondered that the city engineers have not contradicted Mr. Davies' statement.

Mr. Moss.— Yes. Thank you, Mr. Creuzbaur.

Mr. Chairman, I want to have the record show here what I deem to be the tremendous significance of the testimony of this last witness. This last witness was an outside engineer — that is, he was not connected with the city government. He was the one of the thirteen engineers appointed by the mayor to bring in the outside point of view. Now, Mr. Creuzbaur was associated with Mr. Fort and Mr. Goodrich. Perhaps it might not be invidious for me to say that Goodrich, Fort and Creuzbaur were the most eminent members of that committee of thirteen. These three men examined the point where the accident occurred. They reached the conclusion which I have just read from this sub-committee's report. Mr. Creuzbaur has read the testimony of Davies, who was the one expert brought in by Judge Parker in that coroner's inquest, and he says that his conclusions and the conclusions of his associates were diametrically opposed to the conclusion of Davies; and that there were available therefore to the district attorney and to the Public Service Commission these three eminent engineers, who could have at once met Mr. Davies before that coroner's jury. Not only that, but that these three men had gone over all the points with the entire committee of thirteen, and there was an unanimous accord in the committee of thirteen.

Now, that simply shows that in this hearing before the coroner, which was overloaded with experts and engineers and employees, fourteen of them belonging to the United States Realty Company, that testimony that was available to the city was not used.

Mr. Feinberg.— It appealed to me further than that. Very often the district attorney doesn't produce all his testimony before a coroner's court; but it appears that he was in possession of it at this point, and that was why I asked the question of Mr. Follette, whether he took up the advisability with his chief as to commission of this question to the grand jury.

Mr. Moss.— That goes a step further. When this coroner's inquest was over, and it had served the purpose — which is very often the only purpose of such an inquest — to develop all the facts, to develop all that the defendent might say for himself, which I think probably was in the mind of the coroner — was in the inquest to draw out all the testimony that might be given to

explain on the side of the United States Realty Company, their position — then there was evidence in the hands of the Public Service Commission — to say nothing of the district attorney, who is not within the scope of our investigation, but certainly in the hands of the Public Service Commission, there was the testimony of these thirteen engineers, particularly of the three who have been brought to our attention by Mr. Creuzbaur, plus the testimony of the mining experts from the United States government, and other testimony that I have not yet offered to you, which could have been laid before a police magistrate or before a grand jury. But, according to the testimony of Mr. Follette, the whole thing went to sleep at the end of the inquiry. And I must say, Mr. Chairman, that the blood of nine dead people cries for vengeance.

Mr. Feinberg.— You didn't develop sufficiently your statement of just now; you started to do so, Mr. Moss. The viewpoint of the district attorney is entirely different from the viewpoint of the Public Service Commissioner. Here the Public Service Commissioner is interested in the engineers who supervised the property. Now, they were not ordinary people — the engineers are men of expert knowledge, and they should have seen the conditions —

Mr. Moss.— Which everybody else did see.

Mr. Feinberg.— Which the ordinary shorers saw; the ordinary timberers saw.

Mr. Moss.— Now, consulting with Mr. Smith here: It was no part of the business of Mr. Smith or of Senator Lawson or of Mr. Thompson to help the criminal authorities or to advise the criminal authorities as to the making of a case. They were interested in one thing — that was the structure and the relation to that structure of the Public Service Commission. And the evidence that was gathered has been preserved. They could not forsee that the matter would end there; they could not forsee that nothing else would be done; but they could see that there was a vast amount of information gathered up to be of use, which if we had had we would have kept.

Mr. Feinberg.— Pardon me — another thing that interests me very much is, why did Wallstein make so much of a secret of these United States engineers' reports?

Mr. Moss.— Well, I think I'd like to ask the coroner about that. The coroner is here, and he ought not to escape the comfort of that scare.

CORONER FEINBERG is sworn, and takes the stand.

Q. (Mr. Moss.) Mr. Coroner, you presided at this inquest which we have been discussing? A. I did, and made a thorough investigation of the grounds where the accident happened on the day in question and within an hour after the cave-in.

Q. Yes. And what, if anything, did you observe about this sub-structure that has been under discussion? A. I found that the supporting structure or sub-structure differed entirely from the usual type of structure being used throughout the city in the subway work in that I-beams were being used instead of timbers for the horizontal supports. I also observed from the number of the facts that were presented to me by different witnesses, both preliminary and at the inquest, that there had been a reasonable deficiency of supporting side struts, which was very apparent.

Q. And what you said you saw? A. Yes. By noticing the other part of the structure and chasing through the part that had collapsed — that is, going into the excavation below 23rd street. The type and character of the supporting structure being the same there as at that point that had caved in — at 24th street, between 24th and 25th streets. Those are the main things that I noticed.

Mr. Moss.— Yes. Do you know anything at all about the investigation that had been made by the government engineers? A. Nothing, absolutely nothing, until to-day hearing the Commissioner testify.

Q. This is the first knowledge you had that United States engineers had examined that work? A. That they had any interest in the work; excepting that after my inquest was closed, if I remember correctly, or about the time that the inquest was being held, I received a card or a letter from a mining engineer resid-

ing in Pittsburg, asking at that time either what the conclusions of the jury were or whether he could be present at the inquest. And I remember in a hazy way receiving a letter or a card.

Q. It wasn't conveyed to you that he had any knowledge? A. It wasn't conveyed to me that he had any knowledge whatsoever.

Q. Do you know of any reason why that knowledge should have been withheld from you? A. None, none.

Q. You had the power to issue a process to get witnesses? A. Would have been glad to put him on the witness stand had he appeared with any facts in his possession that would throw light upon the cave-in.

Q. You didn't know that the engineer had gone over the work with the commissioner of accounts and had given testimony to the commissioner of accounts? A. Not until I heard the commissioner of accounts himself testify this morning.

Q. Was one of the intentions of this hearing before you and the jury to develop the facts and the contentions of both sides? A. My intention at that inquest was to develop all of the facts that bore upon the killing or the death of the eight or nine people who met their death; and if there was anything of a criminal nature that had transpired either upon the board of directors or upon any of their sub-foremen or foremen, or any of their workmen, and if they were criminally in it, it was my duty to present to my jury so that those particular persons could be held for the grand jury.

Q. How were you impressed by the testimony of these Italians — I think one Austrian and most of the others Italian — timbermen, as to the shortage of timber? A. They impressed me favorably.

Q. That is, that they were telling the truth? A. That they were telling the truth.

Mr. Moss.— I think that is all.

(Gentleman requests to be allowed to question coroner on behalf of coroner.)

Q. On behalf of the coroner, may I ask one question?

Mr. Feinberg.— Yes.

Q. Mr. Coroner, is it a fact that you called every witness brought to your attention? A. (Coroner) Every witness that was presented to me, either by the district attorney, by the police, by the United States Realty Company through Judge Parker, or by anybody else.

Q. And by I, myself? A. By you, yourself, presented to me. From day to day, as the hearing progressed, I asked from time to time — if my memory is correct — whether there were any other witnesses on that particular line of examination.

Q. And as the hearing progressed the names developed you called to answer? A. I did, immediately, on my own initiative.

Q. You don't now recall having overlooked a single witness? A. Not a single one that was ever brought to my attention. In fact, I think that the record stands as the most complete record of a coroner's inquisition that has been held in New York county in my time and in the history of the coroner's office.

Q. And, Mr. Chairman, on behalf of the coroner, I would like to ask that the entire record be submitted to the Committee.

Mr. Moss.— And you had no reason to suppose that all the testimony was not being brought out? A. None in the world at that time.

Q. (By gentleman who questioned coroner on behalf of coroner.) In fact, you held your hearing open several days to see if you could get other witnesses? A. Absolutely.

Q. (Mr. Moss.) Well, now, Mr. Coroner, have you any recollection of any other accident of this kind upon the subway — fatal accident? A. Well, there was a subsequent fatal accident at 38th street.

Q. Well, we are covering those two. A. Well, exclusive of those two fatal accidents, as far as a great number, no; but there have been a number of fatal accidents in the course of construction.

Q. But that was underneath. Not caused by a cave-in? A. No, not caused by cave-in, but caused by falling rock, caused by falling rock or falling tools or falling buckets or things of that kind.

Q. Did you know, or was it brought out in the investigation, that there was a blow-out — I think it was called a blow-out — in this same section, in the neighborhood of 24th street, a short time before this particular and fatal accident? A. That was brought out at my inquest, and I think it is a part of the testimony.

Q. That is, a short time before? A. A short time before this, there had been a blow-out during some blasting.

Q. Yes; brought down a part of the sub-structure underneath? A. The sub-structure; but there were no fatalities or anybody injured.

Q. Traffic was held up? A. Traffic was held up until the parts were repaired.

Q. And the suggestion was made at the inquest that that should have called attention of the Public Service employees and of the contractors to the danger of that kind of construction? A. That was true. And, in fact, I think I asked that question myself —

Q. I think you did. A. —of some of the witnesses.

Mr. Moss.— I think this is as far as we can go to-day, Mr. Chairman.

Mr. Feinberg.— Mr. Coroner, let me ask you a question.

Q. Have you, in your public capacity as coroner, deemed it your duty to call the attention of the Public Service Commission to these accidents, calling them fatalities due to lack of supervision? A. Not exactly due to lack of supervision, but at different times I have called the attention of the Public Service Commission to the findings at inquests before me into deaths along the lines of the stations of the Interborough in which the question of accidental falls from the platform were at question. Nothing to do with things of construction — that has nothing to do with construction.

Mr. Feinberg.—(Chairman.) Have you nothing further to offer? Well, this Committee will stand adjourned until to-morrow morning at 11 o'clock.

Statement made by Commissioner of Accounts Wallstein immediately after adjournment:

Mr. Wallstein.— I learned that in the course of the investigation as of this afternoon, the remark was made, "Why did Wallstein keep the United States government report secret?" The answer to that query is that Wallstein did not keep the United States government report secret but, having telegraphed to the United States Bureau of Mines for permission to make it public, and having received in reply a statement from the Bureau to the effect that it was not to be made public, but was merely for the confidential information of the New York authorities, I saw that a copy of that report got to the New York county district attorney and the New York bureau of fire prevention and fire department. And, complying with the request of the United States Bureau of Mines, did not make it public.

Adjourned to May 2, at 11 A. M.

The meeting was called to order at 11:15 A. M., Senator Thompson presiding.

Testimony of Mr. JAMES HENRY HARPER; examination by Mr. Frank B. Moss. (Witness is sworn.)

Q. What is you occupation, Mr. Harper? A. Engineer.

Q. At the time of the cave-in on Seventh avenue last September, did you enter the subway and observe the conditions there? A. I did not enter the subway.

Q. What did you do? A. The cave-in was in too chaotic a state for me to risk life and limb. I simply took a careful survey of conditions from several points, from the big manufacturing building alongside, from two different floors, and then down on the street, and it happened that I was in just the right position to see the gentleman who was making the official investigation, the gentleman who made the statement yesterday, I believe, Mr. Follette. I didn't know him then, but I afterwards found out.

Q. Did you observe anything with reference to the cause of that

cave-in? If so, state it. A. I heard that there was a gas explosion there, and that was my primary purpose in going there. I assumed that there was some negligence. The other observations led me to discover that there was no such thing, and the question I believe was asked the superintendent by Follette, whether there were any strings loose. I don't know that he used the exact words, but in substance he said, he seemed then to hardly understand what he wanted. There was no evidence of any of the pieces that had been taken out.

Q. That was from your own observation? A. I looked them all over carefully to see if there had been — there were no posts there, there was nothing to tie the several pieces to in that hole there. Had there been a gas explosion, and the cover lifted slightly, which there might have been and possibly was, I don't know, it would have given just the result that they obtained. Lifting would have dropped the pieces because they were not tied together.

Q. Well, of course, the explosion and the striking of the posts by pieces of rock would also accomplish the same purpose when they were not tied together? A. Exactly; it would accomplish the same purpose had there been no explosion.

Q. That was your own observation? A. That was my observation.

Q. Would you like to ask any question, Mr. Thompson?

Senator Thompson.— I think you are the second citizen of the city of New York who has volunteered information that they are willing to get on the stand and swear to.

Mr. GEORGE H. CLARK, being duly sworn, testified as follows:

Q. And your corporation had the inspection of the subway next to the one that caved in, didn't you? A. Next to it, no.

Q. Well, do you know who it was that restored the sub-structure, and the sidewalk plank, did he come after the accident? A. The officials of the United States Realty Company.

Q. Did you have anything to do with it? A. I did not do the immediate work following the accident.

Q. Were you called in to restore the damage, the cave-in? A. Why, I had men working right north of that point the night of the accident, and as soon as the accident occurred, I was advised by my night man and I went right down there and was one of the first to arrive. I was there before any of the men from the United States Realty and Improvement Company called, and shortly after arriving I met Mr. Ridgeway, the engineer of the subway construction, and he requested me, and at the request of Mr. Kennedy, I put men to work doing such work as was possible to safeguard the existing conditions.

Q. How long did you remain at work or in charge? A. I was there until, well I guess two o'clock that next morning.

Q. You kept charge of it for several days, didn't you? A. Till one o'clock the following morning after the accident.

Q. What was the nature of the work that was done under your direction? A. Putting in temporary bracing.

Q. You didn't then put in a new structure? A. Oh, no.

Q. Simply braced up the structure? A. Simply making conditions safe as far as the immediate situation was concerned.

Q. Will you state as much in detail as you can how you shortened and how you braced it? A. Well, I will try to explain it so that you will understand. The westerly side cut rock excavation had fallen for a distance of fifty or sixty feet.

Q. On Broadway? A. On the northwest corner of Broadway and 38th street just immediately adjoining the shaft, and that rock in falling had knocked out the vertical supports, permitting the sidewalk to fall into the excavation, the car tracks to sag and also the decking on the east roadway to sag. That brought an unusual load on the supports south of where the roadway had fallen. The weight of the car tracks especially brought an unusual strain on the supports immediately south, with the tendency of throwing them over toward the north. In order to prevent such a condition, the men employed under those conditions put diagonal braces, inclined to the north tying these posts together so as to prevent them from falling to the north.

Q. Then, you didn't restore the decking? A. That was not restored for several days.

Q. Did you do anything with reference to the Seventh avenue cave-in? A. Only the Broadway. I loaned some men and some equipment to the United States Realty Company. I think that is all.

Mr. Moss.— As Mr. Smith was mentioned in the investigation yesterday by Mr. Follette, I desire that he make a short statement this morning, not only with reference to the subway as he observed it, and as it was affected by the accident.

Senator Thompson.— When this accident occurred this Committee was sitting and we thought that there were so many different investigations that we had better allow it to remain with the local authority, so we didn't interfere. The coroner after starting his investigation requested that Committee to be present, and in obedience to that request, which was reiterated, I appointed a sub-committee and sent Mr. Smith with them to be present at the hearing. They had no authority to take any part in it, and did not take any part in the proceedings whatever, except they sat there and listened. I was in there for about fifteen minutes one afternoon — until after four o'clock. The record had never been turned in to the Committee; they never got a copy of it.

I want Mr. Smith, as one of the counsel of the Committee, to tell the Committee what he observed there in the way that these posts were put together and there happen to be photographs here with which he can illustrate the statement.

Senator Thompson.— It won't do any good to swear him.

Mr. Frank G. Smith.— As associate counsel to the Thompson Investigating Committee, I was assigned to the coroner's inquiry, and as a result of that inquiry I was enabled to observe the character of the construction at the Seventh avenue accident. The difficulty as I noticed, was in the fact that there were three elements of supporting structure. The basic element was a number of posts, the second element was a steel I-beam.

Q. Set on top of the post? A. On top of the post. The third element was a shorter post which went to the roadway.

Q. That is from the top of the I-beam up to the street decking? A. Up to the street. There was no mechanical tie uniting these

three columns. The result was that, and from a layman's standpoint, as it impressed me on that inquiry, was that the I-beam formed the body of the hinge, or the tie of a hinge, so that when there was any force exerted on one of those elements, the whole structure went out in a run, as it was called.

Q. That is, the different structures standing up fell over, one hitting the other? A. Just like a set of dominoes as you stand them up on a table.

Q. Well, now, you were able to see this in the subway, were you? A. I saw that condition. I know what that was.

Q. And you saw the case and heard the case develop in the coroner's inquest, so that you heard the testimony of the various witnesses that were called to describe the condition, and you also saw the photographs and the plans that were used? A. Yes.

Q. And the model? A. Yes.

Q. Well, as to such bracing as was used there, what did you observe? A. Why, the case developed the fact that between and in order to support that hinge construction, there was a timber wedged from I-beam to I-beam with a wooden wedge, and that in order to put in the main or permanent steeple, it was necessary that this was taken out, and it had been out for a period of several years.

Q. So that whatever loose support was there, was wedged support which had been removed largely? A. Had been removed.

Q. Well, were you able to see with your own eyes evidences that that sort of support had been taken away? A. No, you couldn't see that.

Q. That was testimony. A. That was the development of the case.

Q. Was there evidence of that in the photographs that were used? A. No, the thing had dropped down, you couldn't tell what was and was not as far as structure was concerned.

Q. You heard the testimony of the laborers, the timber men, as to the shortage of material, did you? A. Some of them.

Q. Those that you heard, how were you impressed as to whether it was truthful testimony, or not? A. It impressed me as truthful testimony.

Q. I believe that is all, Mr. Smith.

Senator Thompson.— I assume you took no part in the proceeding. A. I simply sat as a matter of inquiry.

Mr. CRAVEN, being duly sworn, testified as follows:

Q. (By Mr. Moss.) You did not testify on the coroner's inquest? A. No, sir.

Q. Had you ever observed this substructure before it fell? A. Not at this particular point, no sir.

Q. Had you any personal knowledge of the kind of construction they were using in the temporary structure? A. Only from day to day, from hearsay; that is, I have seen what was supposed to be a similar construction on the Broadway subway by the same contractor.

Q. Where had you seen that? A. On Broadway.

Q. Before the accident? A. Not before the Broadway accident, no, sir.

Q. What did you do to make yourself familiar with the types of temporary structures being used by the various contractors? A. I have observed their construction generally along the line; I have been over to Seventh avenue and looked down into the cut and seen the general character of the construction. I have been in many places in the subway and seen the conditions.

Q. Did you see the general character of this sub-structure before it fell? A. I never examined it critically. Never made a critical examination.

Q. Did you have the time to do it? A. Well, I suppose if I had seen any reason to suspect anything there that I might have found the time, but I have been very busy and do not get there as often as I would like to.

Q. Did it occur to you that there was an unusual situation in New York in the carrying of an immense traffic over this cut that ran from so many streets? A. The same as on all others —

Q. It was an unusual condition and likely to be a dangerous condition unless well cared for? A. All of the subway work is dangerous.

Q. Yes, I know, but particularly so when street cars and all sorts of traffic go over wooden sidewalks supported upon posts on streets. A. That is the general character of our work.

Q. But that is comparatively new to this city. It was used in the former subway construction, wasn't it? A. In some places, yes, sir.

Q, Did you know that there had been an accident in this very subway a short time before the fatal accident in which some of the decking had caved in on Seventh avenue? A. I cannot recall it, probably I did not at the time.

Q. Well, I want to know, Mr. Craven, what you did as the chief engineer of the Public Service Commission to see that the traveling public of New York were protected against the danger incident to that work? A. I depended on a very able corps of engineers and assistants to keep me informed of any particular condition.

Senator Thompson.— I am going to strike out that very able proposition and I am going to ask you engineers to confine yourselves to facts. A. That is a fact.

Senator Thompson.— Well, we are going to hold that it is not a fact as far as this inquiry is concerned, and I don't want any more of that in the record. We will cut out compliments, and when you say "able" tell us the facts; tell us where he graduated, how much experience he had, where he worked; so that we may draw the conclusion as to whether he was "able" or not. That's what we would like from now on. We want to go into details. That's only fair, Mr. Craven. I don't mean that in any spirit of criticism, but it is a serious proposition. You have got the largest engineering force in the world, and they ought to be the most efficient. A. They are.

Senator Thompson.— We don't want to criticise, but we can't get anywhere from the idea that So-and-so is very able and So-and-so is very satisfactory, and all that kind of stuff; that doesn't get us anywhere. A. Possibly I might speak of myself, if you have no objection.

Senator Thompson.— I wish you would, and give us your personal experience, if you like, because this is a serious proposition. A. Well, in the first place, I have been an engineer for forty-five years. For about the first fourteen years of that time I was in

California, about eight years of that time I was in the mines of California and Nevada, and had a very good experience in mining work, probably more constant and practical experience in mining work than many of the so-called mining engineers I was in all kinds of mining — in mines day after day, traveled through hundreds of miles of complicated timbering country.

Q. (By Mr. Moss.) That makes me remember what Mr. Enzian said. He said that there appeared to have been nobody on the Public Service Commission that knew anything about mining, from what he observed at that Broadway accident. A. I know a great deal about it.

Q. Well, did you give the benefit of your mining experience to that cut through the dangerous New York schist? A. My experience and the experience of the men in charge of that work who had been with me in subway construction for the last fifteen years, made it possible for me to judge of their ability. Now, the mining engineer — I don't know the gentleman — he has never had anything like the experience that these men have had, because they have worked right in the subways here for fifteen solid years. They were better able to judge of the condition of the rock in Manhattan than a man who came into the coal mines of Pennsylvania — from the coal mines of Pennsylvania.

Q. They made a great mistake there? A. They did not.

Q. Why, they didn't support the rock on the left side. A. There are a great many places.

Q. They didn't support the rock on the west side? A. They didn't; no.

Q. And, do you know, Mr. Craven, that the engineering experts writing for the papers called them down? Do you know they take the same position that Mr. Enzian did? A. Yes; they didn't see it either.

Q. How do they know? A. Well, they never saw it — they never had any opportunity.

Q. How do you know they didn't have any opportunity? Do you think they would enter into a criticism of this work without any knowledge? A. They certainly didn't see it before it happened.

Q. Did you see it before it happened? A. I did not.

Q. Why? A. Because I can't see everything on the work.

Q. But why didn't you, as a mining engineer from the west, when there was a cut through thirty-five feet of New York schist, take a look at it? A. I would have nothing else to do, Mr. Moss, if I attempted to examine into the details of our construction work. I have to trust to the subordinates on the works to do that. You understand that.

Senator Thompson.— For the record, tell what this schist is. A. A schist is rock that carries in it a good deal of mica. It is a natural rock.

Senator Thompson.— Just like all this formation you see on top of Manhattan — you either get that, or else you get sand? A. It varies very largely; a great deal of the rock is very strong; some of it is very hard to take out under any conditions Other is called a mica formation; it is called a mica schist, or Manhattan schist.

Senator Thompson.— You say you didn't see this Seventh avenue, this United States Reality shoring before the accident? A. No, sir.

Senator Thompson.— Never had seen a picture of it? A. I can't say I have never seen a picture, but it never had been particularly brought to my attention.

Senator Thompson.— Did you know before the accident that it was being held up without posts, without the braces, and without having the supports tied together? A. I don't believe it was.

Senator Thompson.— You never heard of this before the accident? A. No.

Senator Thompson.— Most of it had supports at places that were simply wedged? A. Well, most of our timbering is wedged. Some of them have cleats where the joints are.

Q. (By Mr. Moss.) Do you know whether it was spiked or bolted? A. No.

Q. Well, have you found out? A. Only from the testimony I have heard.

Q. Now, let's stick to the mining proposition for a few moments. I notice the Engineering and Mining Journal says:

"As well as we can make out, the engineers of the Public Service Commission have left the matter of supporting the ground to the engineers of the contractors. All of them have manifestly proceeded on the theory that they were doing nothing more serious than digging a sewer. Services of mining engineers seems neither to have been solicited or wanted." A. We did not leave it to contractors altogether.

Q. Didn't you accept the plans of the contractors? Didn't you amend it? A. I didn't.

Q. Did your department amend the plan of the contractors in any way? A. Frequently.

Q. But this particular one? A. I don't know whether they did or not.

Q. This United States Improvement sub-structure — did your engineers change the plans of the contractors? A. I don't know — the plans don't amount to very much.

Q. Did they change the method? A. I don't know whether they changed the method or not.

Q. Have you heard whether or not they did? A. I have not heard. You cannot get up plans for contractors' timber.

Q. Of course, you don't, and what the Mining Journal says is that you evidently accepted the plans of the contractors. A. Well, the Mining Journal don't know.

Q. Did you change them in any way? A. I don't know.

Q. Have you inquired among your subordinates since this accident occurred? A. I haven't.

Q. Why haven't you made an inquiry since the accident occurred, to find out whether your subordinates looked after the method of the contractors and whether they changed the methods of the contractors? A. I have made that inquiry.

Q. Did they change them? A. I don't know.

Q. Did you ever hear that they changed the methods of the contractors? A. I have not.

Q. Have you any record to show that they changed the methods of the contractors? A. I have not.

Q. I will call your attention to this, reading still from the Engineering and Mining Journal. He quotes an authority on the subject, Spurr — "Geology Applied to Mining." He says:

"When any rock, but particularly a shale, is exposed to prossure by the movements of the earth's crust, it is apt to break easily into sheets along certain planes determined by the direction of the applied forces. These planes make little, if any, angle with the bed plane, or may even coincide. They may be straight, while the bedding planes are folded. In short, the two sets of parting planes have no relation to one another. A rock may not split at all along its true bedding planes, while it may separate perfectly along the cleavage planes." This ends the quotation from Spurr, and the Journal goes on to say: "Therein lies the explanation of the rock slides so variously attributed by different investigators to some of the pockets, unknown seams, rotten rock and other mysterious causes. The west side of that excavation being insufficiently timbered the schist slabbed off in blocks, determined by those planes. The planes are not lines of dangerous weakness when the operation is adequately timbered. They are so common in mining that no special consideration is given them. The timbering as shown in figure 2 (which is one of the planes of the Broadway section) was put in at intervals of ten feet. It possibly is very infrequently and insecurely blocked against the ground, and no lagging whatever was used." A. Where does he get that from?

Q. Why, he got it from what? He got it from the plans. A. Now, I claim the right to explain those plans. When a line of timber across a cut is made, it is made as a general proposition. It isn't made to cover every little condition that they may find here and there along the subway. For instance, there are five or six posts as the case may be — four or six posts, in this path across the pit. In between those posts there are struts which keep them separated, and then they are extended out to the side of the excavation. Now, if we find a particularly bad piece of ground there are more of those struts put in; but that plan there, because it doesn't show a strut at every point along that drive, doesn't mean to say — .

Q. He has not only plans, but he has photographs. A. That I understand. We have a great many of them. We have a great many photographs on the Seventh avenue cut. As a matter of fact the rock in the Seventh avenue cut never slid.

Q. But it did break away on Broadway when there was no blast. A. It did.

Q. Was it sufficiently timbered? A. Apparently there was a lack of struts there.

Q. Well, then, it wasn't sufficiently timbered was it? A. It obviously was not at that particular point.

Q. (By Senator Thompson.) Well, you are an engineer, can't you really give us the benefit of a direct answer on that? A. That cut as reported to me was examined only a couple of days before this occurred.

Q. If you handle the contractors in the indirect way that you handle us here, why you wouldn't get along with them very good. A. And we had men examine that work daily all the time, and they kept constant watch over that work and reported everything.

Q. (By Mr. Moss.) Now, Mr. Craven, you have a knowledge of this situation generally because of your experience as a mining engineer. You know no rock fell in there at Broadway, a space of fifty or sixty feet. You know that somebody was killed and other persons were hurt. You have said that if that had been properly timbered it would not have fallen. Who have you held responsible for that? A. You cannot always see those things. Nobody can see them.

Q. But there is fifty or sixty feet; who did you hold responsible for it? A. Well, it had been frequently examined; there was nothing to indicate that that rock —

Q. Have you any records of those examinations? A. We don't keep a record of a daily examination unless something is observed that requires to be placed on record.

Q. Have you looked for records? A. Well, no, I have not.

Q. Did you put anybody on trial? A. I did not.

Q. Did you attempt to hold anybody responsible? A. The jury attended to that.

Q. Did you leave that for the coroner's jury? A. No.

Q. The coroner's jury didn't discipline anybody, did it? A. I don't think they did.

Q. Did you hold an inquiry to see whether they were able assistants or whether they had neglected their duty at that point? A. We didn't hold an inquiry, but we examined and I have a

report of the accident telling just exactly what happened and the conditions as far as they were observed. We didn't put anybody on trial.

Q. Did you hold anybody responsible for the failure to timber that place properly? A. We did not.

Q. Did you attempt to? A. I did not.

Q. State anything that you did in order to find out who, if anybody, was responsible for that failure to timber properly? A. My assistants examined the work and made their report as to what happened.

Q. Who did you hold responsible for that? A. Didn't hold anybody.

Q. Who did you consider you might hold responsible? A. I didn't do that.

Q. Who would you naturally hold responsible? A. You can't hold anybody responsible for accidents of that kind, now you know that well enough. Rocks slip, not daily, but nearly daily, but you can't hold a person responsible for them.

Q. Why didn't you take up the testimony that had been developed in the coroner's inquest, and all of the testimony that the district attorney didn't put before the coroner's jury, and all the evidence you could gather, and hold an investigation to see whether any of your men were responsible for the loss of life in those two accidents? A. I couldn't see there were any of my men responsible for the loss of life. That's in my judgment, of course. I have enough information to form an opinion, and that's my judgment.

Q. What did you do to discharge your duty as chief engineer after these two fatal accidents and after these nine persons had lost their lives? A. I looked at the ground. I examined them myself and I had my assistants report to me. I told them to make a thorough examination and report the result of their investigation.

Q. Did you see any of those hinges that Mr. Smith described? A. No, I didn't know Mr. Smith knew anything about timber. Did you see any of those? (Speaks to Mr. Smith.)

Q. He has two eyes. A. Where did he see them?

Q. In the subway. Well there was some left standing in the section of the United States Realty and Improvement Company. A. Yes.

Q. Was some over on Broadway? A. Yes.

Q. That only ran about fifty or sixty feet? A. It didn't run at all.

Q. How do you know it didn't run? A. Because I was there.

Q. Was there sixty feet of sub-structure down? A. Well, it was damaged more or less.

Q. Was there sixty feet of sub-structure down? A. I don't know.

Q. How much was down? A. I think the length of — not the length of the slide, but the length of the sub-structure that was down.

Q. What do you mean by down? A. Well, only a part of it.

Q. How many feet? A. Only a portion on one side was down for about forty or fifty feet, possibly.

Q. Now how do you know it didn't run forty or fifty feet? A. It was knocked outside.

Q. How many feet did it run in Seventh avenue? A. It ran nearly the length of a block.

Q. Didn't it run 350 feet? A. Well, I can't say.

Q. Didn't it run nearly two blocks? A. I think not.

Q. Didn't it run until it was stopped by the permanent steel structure? A. It ran to 23rd street.

Q. Didn't it run until it was stopped by the permanent steel structure? A. That's about where it stopped.

Q. How do you know that? A. Only from the reports.

Q. Did you go there and see it? Was it stopped by the steel structure? A. I don't know as it was stopped there.

Q. What did stop it? A. There was no more that could fall down.

Q. It was right up against the steel then, wasn't it? If there had been any more it would have fallen down? A. I don't know.

Q. Don't you think it would? A. I have no more reason to think it would than to think that it did.

Q. Didn't these bents fall one after the other, as the first one struck the second one, it struck the third one, and the third one

struck the fourth one, and they kept on falling until there weren't any more? A. They were dragged on by the weight of the street railroad.

Q. You knew that was up there, didn't you? A. We didn't know it would break.

Q. But you knew that that decking was weighted down by a steel railroad track there fastened together, didn't you? A. But most —

Q. I am only asking you that. A. Certainly it was carrying those tracks.

Q. And you knew that if the decking ever went those tracks might exert pull on it, didn't you? As an engineer you knew that? A. It might.

Q. Well, that's one of the things that was plain to see might happen, wasn't it? A. Well, we had two breaks; I know of two cases —

Q. Wasn't it a plain thing — I am asking you a question — wasn't it a plain thing to see that those tracks might complicate the situation? A. I don't think anybody gave any particular attention to the possibility of those tracks breaking.

Q. Why didn't they? A. They didn't think of it.

Q. Aren't engineers put there to see what is likely to happen? A. Yes.

Q. Exactly — that's what they are paid for, isn't it; and you have the biggest salary of any engineer in the city, or the state, or the United States? A. We have the biggest and most — well you might say the most dangerous job that has ever been undertaken, and we have been more successful with it than with any job of its magnitude that has ever been undertaken.

Q. That's all right, Mr. Craven, but when you find that life is lost because a cut has not been properly timbered, and in another place because the structures fall down one after another like a row of dominoes, it is a serious matter. What did you do in the Public Service Commission to investigate and hold your subordinates responsible, if they were responsible? A. The question of responsibility was taken up, I believe, by the Public Service Commission, but it had been immediately taken over into the hands of the coroner. I am not absolutely sure about it. I

think our counsel advised that the Public Service did not make that investigation.

Q. Well, do you realize that on the 26th day of October that the coroner's jury had not held anybody? That was the day of that verdict directed to the Public Service and that was an intimation — a kindly intimation — to the Public Service Commission that the coroner's jury thought you needed some amending there. Didn't you so consider it? A. No.

Q. Was any one of your inspectors examined before the coroner's jury? A. I don't know. I have the records here, but don't find them.

Q. Did you know that four or five of the inspectors made statements to the district attorney? A. No.

Q. Did you know that they were called as witnesses before the coroner's jury — coroner's inquest? A. I had nothing to do with that.

Q. Why didn't you find out? A. Well, because I was not called upon by the coroner for witnesses.

Q. Didn't you volunteer witnesses? A. No; I didn't think it my duty to.

Q. The jury in deploring this accident, expressed their hope that it will serve to impress upon all contractors and upon the Public Service Commission the necessity for the utmost caution and care, both in the operation and inspection of all subway work. A. We recognize that, and we are doing it.

Q. What did you do to find out whether these inspectors — the five of them who gave their statements to the district attorney and were not examined before the coroner's jury — had not reported all that they should have? A. I don't know.

Q. You should have found out. A. I didn't think that was necessary.

Q. Do you know the character of the statements your inspectors made privately to the district attorney? A. I didn't know they had been to the district attorney.

Q. Didn't even know that? A. No.

Q. Did you try to find out anything? A. I tried to find out and had our engineers investigate the whole condition.

Q. Well, isn't it a fact that when you found out that the coroner's inquest had not resulted in holding anybody, that, to use an

expression, you thanked God and took courage and went on and hoped it wouldn't happen again? A. That is their verdict?

Q. That's about it. A. I don't know that I can add to it.

Q. You were satisfied? A. After reading a large part of the testimony before the coroner and I saw the findings of the coroner to the effect that the direct cause of that accident was an excessive blast; that was the same conclusion that I had reached from my own examination. That was the direct cause.

Q. But do excessive blasts knock down sub-structure for three hundred feet, as a rule? A. No, sir.

Q. Not as a rule. Well, isn't it a fact that the reason sub-structure hasn't been knocked down in three-hundred-foot lots generally over the city is because it has been put up sufficiently strong to stand against the blasts? A. That had stood for about a year.

Q. And do you know how much it had been weakened in that time by successive blasts? A. I only know that mine are supposed to be taken care of when any weakness develops.

Q. Did you know that there was evidence before the coroner and evidence in the hands of the district attorney that there was a shortage of timber supplied and that blasting timbers had been taken out and put in different places? A. I read that testimony, and I read testimony to the contrary.

Q. You read testimony both ways? A. Both ways.

Q. Did you hear any one of those laborers testify? A. I did not.

Q. Did you call any one of those laborers into your office and ask him about it? A. I did not.

Q. Why didn't you? A. Because I didn't think it was necessary.

Q. Why didn't you think it was necessary to take eight or ten men who had made that accusation and talk with them in your own office? A. Because I didn't think it was necessary.

Q. Now, Mr. Craven, if those men had told the truth, that bracing beams had been taken out of places where they were needed and put into other places, leaving the first places unprotected, and that they had a continual shortage of timber of which they complained to their boss, and that some of them had left their jobs, given up their work because they were afraid of the

danger — why wouldn't you call them to you and ask them about it? A. Because I had the testimony there already.

Q. You had their testimony there? A. Yes, sir.

Q. What had you against it? A. I read testimony to the contrary, I told you.

Q. Whose testimony to the contrary? A. I think you will find it there.

Q. Will I find the testimony of Mr. Mitchell? A. I don't know.

Q. Did you remember whether he testified? A. I do not; I don't remember what any individual testified.

Q. Mr. Mitchell was the man responsible for timber, wasn't he? A. I don't know. He was not altogether responsible.

Q. Well, he handled it — he was the timber boss? A. He was the timber boss.

Q. Did you find that Mitchell denied that that had been done? A. I don't recall.

Q. You don't know whether he did or not? A. No, sir.

Q. Well, who was it that denied that it had been done? A. I can't recall, but I think you will find —

Q. Well, I am not saying that I would find — I am asking what you found with the ghost of nine people stamping around looking for recognition? Whose testimony did you read when your dreams were troubled with those ghostly apparitions? Did you dream about those people? A. I am pretty sure I read —

Q. But did you dream about them? Did you go to the funeral of any one of them? A. I didn't.

Q. Now I ask you were nine dead people resting upon the consciousness of all the public officials that had to do with that work there? Tell me now, what testimony you read in that record that controverted the stories told by at least ten of those laborers concerning shortage of timber and danger down there. A. Well, there was a great deal of testimony on that question.

Q. Well, whose? A. Mr. Davis' testimony.

Q. Mr. Davis didn't say a word on that. It was reported he didn't say a word on that subject. A. He may not have reported to the coroner.

Q. Well, did he report something to you that he didn't report to the coroner? A. He didn't report to me.

Q. Well, now, who else controverted those laborers? A. I can't say. I don't know who the laborers were.

Q. Did you ever hear of Mr. Conti? A. I didn't know who the laborers were.

Q. Anybody can read that record. Any private citizen can read that record. A. But any private citizen can't act upon it.

Q. Couldn't you act upon it as the chief engineer? If you had been on the job, Mr. Craven, as chief engineer over this whole business, at $20,000 — A. I don't think the $20,000 cuts any ice.

Q. It makes you the most distinguished engineer in New York. A. That doesn't cut any ice.

Q. Doesn't it give you standing in your profession? A. It gives me standing, yes.

Q. Well, that's the reason I speak of it; not in any other way. A. But the $20,000 don't —

Q. Don't you earn it? Don't you earn it? A. I think I do.

Q. Do you give your whole time to your office? A. I do.

Q. Were you at your office when the accident happened? A. I was away; I was out of New York at the time; I was up at Yonkers.

Q. What were you doing? A. I had gone away for a rest of four or five days and happened to be away at the time.

Q. Well, you are away from your office a great deal of the time, aren't you? A. I am less away from my office than any man connected with our work.

Q. You were in Florida when the Committee wanted you weren't you? A. I was not. I was not anywhere when the Committee wanted me. I was at Frankfort and I left word with the Committee that I would come back on an hour's notice. I had been very ill with grip and went away.

Q. I recall that.

Mr. Moss.— Mr. Chairman, I am game enough and sport enough to give every man his chance —

Mr. Craven.— He might be fair about it.

Mr. Moss.— Well, now, when I spoke of the $20,000, which is the matter that stirred up all this commotion just now, I wanted you to understand that I meant to imply by that that Mr. Craven is a distinguished engineer, with standing coincident to the receipt of the largest salary that any engineer gets in the city service — and far beyond the city service. Now, Mr. Craven, with all these facts before you that are in my mind, I am trying to find out what you did in this emergency? A. I did only what I told you I did.

Q. That's all? A. I examined the work and had my assistants — the men on the work — told them to make a thorough examination in detail and report to me. I couldn't have done anything more.

Q. Well, now, I don't think that you have told me a single thing that you did. A. Well, then, I can't tell you any more.

Q. What did you do? A. I examined the work afterwards.

Q. How much of it did you examine? A. I examined it pretty closely.

Q. In both places? A. Yes, sir.

Q. Who went with you? A. I will tell you the history: I reached my home in Yonkers about 7 o'clock in the evening. As I was going to the house I met some gentleman and he said, "There has been a terrible accident on the subway in Seventh avenue. There was a whole block caved in and buildings are falling into the subway, and two or three hundred people were killed." Well, that looked pretty serious, and I went into the house and started right back to New York. That was at about 7 o'clock in the evening. As I was leaving the door, I was called back for a telephone call. The telephone told me that the cave-in had happened in the afternoon; that there was nothing that I could do there after dark, or see much, so I staid at home and went there the first thing the next morning, and spent a couple of hours on the work to see what had happened.

Q. By that time it was largely restored, wasn't it? A. No. I examined the works and looked at it as far as I could see. I tried to form an opinion as to what the cause of the accident was. I examined some of the timbers where the blast broke, and I came to the conclusion that the blast had knocked the timbers out. Following that for some reason, possibly a weakness in the track,

the tracks broke and carried everything down with them. Now, that's the history of the matter.

Q. In your examination, did you discover that there was faulty construction of the sub-structure? A. I couldn't do that.

Q. Well, then, you didn't? A. That was impossible.

Q. Well, you couldn't tell, from what you saw, whether the construction was faulty or not, because it was down and it was all a total wreck? A. Yes.

Q. Then it would depend upon testimony as to whether there was fault or not. What testimony did you take or examine to determine whether there was fault in that sub-structure? A. Only my examination and report of my assistants on the work.

Senator Towner.— Have you those reports of your assistants that were made? A. Yes, sir.

Senator Towner.— Immediately following that? A. Yes, sir.

Senator Towner.— Does that report show whether or not the construction was faulty? A. I really don't recall whether it took up the question of the construction of the timber bents or not.

Mr. Moss.— Well, it didn't, did it? You have no record that it did. Wasn't that the ticklish part of it all? A. All those things were talked about, but there was no way of anybody finding out whether that construction as it lay there on the ground had been neglected or not.

Q. Now, that was common sense. Now, wasn't there enough of that structure standing either close to the accident or at some other point in that section to enable you to judge? A. No, not in that section.

Q. Let's take Broadway — wasn't there enough of the structure standing there for you to see what kind of a structure it was? A. Yes; that same structure is standing there to-day. It has been there for two years, and this would have been there for two years if it hadn't been blown down by the blast.

Q. When is it going to fall down again? A. I don't know.

Q. Now, if another blast like this happens it will go down? A. It might.

Q. Hasn't that work down there in the United States Realty and Improvement Company section been straightened since this accident? A. Well, there has been some considerable useless timber.

Q. Well, has it been straightened? A. Yes, it has. It was a proper precaution to take, Mr. Moss.

Q. It was a proper precaution to take so that it wouldn't fall down again? And the structure that you say has been standing since the accident, has been strengthened? A. Yes. In that same cut we had sixty feet of that same timber knocked out. It was knocked out by a blast.

Q. Only a short time before the Seventh avenue accident — and the timber didn't fall? A. No. That was an indication that it was apparently pretty good timber.

Q. Well, wasn't that an indication also that there was need for watchfulness in that section? A. There has been watchfulness.

Q. Was there anything special done after that blow-out of sixty feet — was there anything special done to safeguard? A. Why, yes.

Q. What was done? A. What do you mean? We have inspectors there, we have engineers there that are on that work all the time?

Q. I know you have, and that is the very point of the thing. When you found you had to get testimony — I am getting back to where we were a few minutes ago — when you found you had to get that to determine whether anybody had neglected his duty, what did you do to get testimony,— anything? A. I did not.

Q. And I think you have said you did nothing to determine whether or not the testimony of these Italians was true as to whether supports had been taken out? A. No, I did not do that.

Q. Well, now, if you found a short time before the Seventh avenue accident, somewhere south of that, fifty or sixty feet were blown out by a blast and the sub-structure didn't fall then, doesn't that indicate to you that there must have been some particular reason? Didn't that indicate to you that there was some reason why it should go down in one place and not in the other? You had at least ten men say that timber had been stolen from one place

and taken to another, because of timber being short. A. I didn't know that.

Q. Well, you told me that you did. A. That was long afterwards.

Q. Well, I don't care when it was. If you had evidence at your command from a whole lot of these men that there was a shortage of timber at that point, wouldn't that lead you to an inquiry with respect to whether there had been a shortage of timber and whether somebody was to blame for it? A. I have evidence that there had been, and evidence that there hadn't been.

Q. Well, why didn't you ask the commissioners to hold a hearing so that those two sets of witnesses could be put one against the other and the truth determined, and you discharge your duty? A. Well, the coroner made an investigation; I think that should cover.

Q. Do you say the coroner made a thorough investigation? A. So far as I could see.

Q. Was the testimony of Mr. Crusbauer taken before the coroner? A. No, it wasn't good for anything if it had been.

Q. He wasn't good for anything? A. He has never been in the subway except to knock something after it has happened.

Q. He has never been in a subway — is that a fact? A. He does not know anything.

Q. (By Senator Towner.) Won't you tell me, Mr. Craven, whose duty it is to examine and know about the construction of the substructure? A. It is the duty of our engineers and inspectors and of the contractors,— men in the works, and they are doing it all the time.

Q. Well, you say, then, that your inspectors and assistants were there watching? A. Yes, sir.

Q. Well, by that, do you mean that they were there to see that proper bracing was put in them? A. Yes, they are there to look over that work; they are looking over it all the time. If the inspectors and engineers find anything that appears to them to be wrong they have it corrected at once.

Q. (By Mr. Moss.) Mr. Craven, you have seen fit to criticise Mr. Crusbauer, who was called to serve by the mayor of the city of New York. A. I can't help that.

Q. Now, don't you say you can't help that, but listen to me; you have seen fit to criticize Mr. Crusbauer whose engineering ability is recommended sufficiently by the mayor to call him from outside the Public Service to join his committee. There were thirteen men on that committee. Did you call any one of those thirteen men who examined the subway to give you his opinion as to the cause of that accident? A. Not one.

Q. You saw their report, didn't you? A. Yes.

Q. Did you think any one of them was a good engineer? A. They are all of them very good engineers.

Q. Don't you think that every one of those engineers was competent to discuss the mechanical proposition as to how posts were joined together,— don't you think so? A. Yes.

Q. Now, there was E. P. Goodrich, the chief consulting engineer of the city of New York, of the borough of Manhattan. A. He is an excellent engineer.

Q. Mr. Ford's an excellent engineer, isn't he? A. Yes.

Q. Mr. Nelson B. Lewis is an excellent engineer. I guess he has had more experience than any of them. Now with thirteen of those,— you don't like Crusbauer, but certainly out of thirteen you could get somebody. You said they were always knocking. A. I want to correct that if you have drawn that conclusion. I meant to say that Mr. Crusbauer knew nothing about subway work. He has never been connected with subway work.

Q. (By Senator Towner.) Who was the engineer who was in immediate charge at that point? A. Mr. Ridgeway was the engineer of subway construction. He has general charge over the whole works.

Q. Well, was he in immediate charge, or some assistant of his? A. At that point Mr. Mills was division engineer. Under him at that particular section was Mr. Vitch.

Q. Well, did Mr. Vitch have immediate charge at that point? A. Yes; then there were other engineers under him who were on duty in the works all the time, in and out of the works, and in addition to that the inspectors who were supposed to be there all the time. Now, Mr. Vitch is a man who has been on subway work for fifteen years. He has been connected with subway work that

long. He knows, I think, all about general conditions and is fully as competent a judge of them and construction as any party that I could bring in here from the outside, and much more so, because he has been right there and seen the work. He has seen the work daily.

Q. Well, was he on the grounds every day at that point? A. I can't say that he was there every day at that point. One of the assistants probably was there every day and an inspector was there all the time.

Q. And do you know their names? A. I can't recall the names. I can give you a list of them.

Q. (By Mr. Smith.) Mr. Craven, if there was something occurred that you recognized as wrong at that particular point who would you hold responsible,— what is his name? A. Well, I couldn't say just who. I would have to find out who to place the responsibility on.

Q. Who is the manager that you would hold responsible for some fault in timbering construction? What is the name? A. Well, to move right down the line, Mr. Ridgeway and Mr. Myers and the assistant engineer.

Q. Who would you hold responsible? A. I can't say that I would hold anybody responsible. I would have to find out. I might hold the wrong man responsible.

Q. But for faulty timbering construction, who would you, as chief engineer, hold responsible? A. For the timbering construction?

Q. For the timbering construction. A. The engineer.

Q. Now tell me his name? A. I can't give you his name.

Q. (By Mr. Feinberg.) Describe him. A. I can't give you any name.

Q. (By Senator Towner.) What position would he be designated as occupying,— the timberman? A. Oh, the division engineer in charge of the work.

Q. (By Mr. Smith.) If you went into that cut at Seventh avenue and personally observed a wrong condition of timber, who would you hold responsible,— tell me his name? A. Well, what

would you call a wrong system of timbering,— what would you call wrong?

Q. But tell me the man's name that you would hold responsible? A. Well, I would go to the chief engineer, John H. Marsh, I would go to him and call his attention to the fact that the timbering should be rectified in some way, and then I would go direct to the contractor, the man who does that work.

Q. (By Mr. Moss.) But you have no jurisdiction over the contractors, have you? A. If we see anything wrong, we can have it rectified.

Q. You could hold them up, but you couldn't discharge the contractors? A. I can discharge any man on that work if I find that he is irresponsible or doing wrong.

Q. Did you ever do it? A. No, I haven't done it.

Q. (By Senator Towner.) Well, can't you under the contract that you have with contractors compel them to correct any faulty work in construction? A. Yes.

Q. (By Mr. Moss.) I want to ask you about concrete a little bit. Do you know anything about the concrete that was applied to the outside of the tunnel at the Harlem river? A. Yes, sir.

Q. How was it applied? A. The concrete is mixed and run down through a chute and is deposited into the river from the bottom of that chute.

Q. Now, the tunnel, at least the chute, is lying on the bottom of the river, is it? A. Yes.

Q. There is a platform up above on which the concrete is being mixed? There is a tube runs from that, we will say, down to the tube that rests on the bottom of the river? A. Yes.

Q. And the river is flowing all that time? A. Yes, you don't know just exactly how it is done, Mr. Moss. Now, I will explain it to you, can I? That tube is lowered down to the bottom of the river, then the tube is charged with concrete which is held there in suspension. You understand that?

Q. Yes. A. It isn't turned promiscuously loose and allowed to run all over the tops of those tubes. After that tube is full and the supply kept up, this tube is gradually raised up from the bottom, a little bit at a time, and as it raises up, the concrete flows

out and deposits. That process is kept up continually until we have a complete mass of concrete around those tubes.

Q. Well, what prevents the Harlem river from carrying it all away? A. Because it is deposited, and can't be carried away. It is in a form.

Q. What prevents the Harlem river from carrying away some portion of it? A. Well, it is a well-known process.

Q. But what does prevent the river from carrying away the life of the cement? Did you ever see the river white when concrete work was being done? A. No.

Q. Or gray, of course? A. No.

Q. Did you ever see the river in any way discolored? A. No.

Q. Did you ever see any streaks of discoloration? A. Only from the leaks of the tubes at the top of the surface.

Q. Did you ever handle any of the concrete that had been raised up off from that tube, and did you ever see any of it crumble? A. Yes, that was only for a little distance.

Q. Well, now, in making cement for tubes, what portions are used? A. One, two and four.

Q. What does that mean? A. One portion of cement, two portions of sand and four parts of broken stone.

Q. Is it necessary that the sand and gravel should be mixed? A. All of them should be mixed to form a good mixture.

Q. What is done in the mixing of these three elements for use in this tunnel work; how are they mixed and where they are mixed? A. In a rotary mixer, concrete mixer. The stone is dumped in and then the sand and then the cement,— then they are all revolved.

Q. Is that being done in all cases where cement is being used? A. No, sometimes it is mixed by hand.

Q. Where is it being mixed by hand? A. Only in local places as a rule. We use the rotary mixer wherever we can.

Q. Is the mixing all done in the city of New York? A. Yes.

Q. Is the sand and gravel mixed at any point of shipment? A. We are now getting some that is mixed with the sand and gravel at the factory.

Q. Where? A. Down on Long Island Sound. I can't recall the name.

Q. Well, you say it is mixed out there,— that is the sand and gravel and brought up by scows. And you depend then upon the mixture that was made down on Long Island? A. Yes.

Q. And then simply add the cement to it up here? A. But we sample that very frequently to see if we got the proper aggregate.

Q. What do you mean,— to see whether a proper mixture is made? A. Well, we take frequent tests of it, yes.

Q. Have you any inspector out of town? A. Yes, we have men inspecting that work all the time down on Long Island, I don't know whether he is there all the time or not, who is the inspector there.

Q. Can you give me the name of the inspector? A. I can't think of his name.

Q. Is he there continuously? A. I don't know.

Q. Don't you think that very important? A. No.

Q. Why not? A. Because we have examined that plant. I have been through it myself, and that is one of the finest plants that there is anywhere.

Q. Is that your plant? A. It is the plant of the man who supplies the sand and gravel.

Q. And you depend on him? A. Oh, no, we don't.

Q. Is he there all the time? A. Not all the time.

Q. Well, what do you do to cover the time when he is not there? A. When the sand comes here we frequently sample it right here to see if we got the proper proportion. Now it is a very reliable firm of people and they produce this material at our request with excellent results, and we get a better aggregate for this reason. The sand and gravel is mixed together,— that is from very large gravel, two or three inches, down to a very fine sand. That goes through a system of screens and is all separated, — all those aggregates are separated. Then this is all taken to a point where we get the proper proportion of each of these different sizes and then mixed together there and placed in the scow and sent to us, so that we get much better results than just to get the ordinary sand and gravel.

Q. How do you know? Who owns that plant down there? A. I can't recall the name. I think Mr. Ridgeway knows the name.

Mr. Ridgeway.— Henry Reisters.

A. Oh, yes, Henry Reisters.

Q. (By Mr. Moss.) Can you tell who is the inspector down there?

Mr. Ridgeway.— I cannot.

Q. (By Mr. Moss.) Now the cement which is applied to that mixture that is brought up from Long Island,— where do you have that? A. Well, I think we have about twelve or fifteen different cement factories,— which one do you refer to?

Q. Well, take any one — down at the Battery. A. I would have to refer to the record.

Q. Well, I didn't ask who it was, but where do they keep the cement? A. At the storehouses, or at places on the way, in bags.

Q. But where are those bags kept? A. They are kept on the works in different places.

Q. Are they ever kept on docks? A. I guess sometimes.

Q. What happens to cement if it absorbs moisture in bags? A. Unless it was set up, it gets hard.

Q. Well, is it good for anything then? A. We don't permit it on the work then.

Q. And you wouldn't think it good even if you kroke it up? A. Not very good.

Q. It would have to be burned over? A. It can be used if it is broken up, but not safe; we don't use it at all.

Q. Now, are you sure that that cement is mixed properly before it is applied to the tunnel work? A. That's my personal opinion — from the report of the inspector.

Q. Well, have you seen those reports? A. No, I haven't seen the report.

Q. Have you looked at the work? A. Frequently.

Q. Have you ever been down in that tunnel? A. Not in that tunnel, no.

Q. Have you been down into any of the tunnels under the river? A. No.

Q. Well, have you been in the headings? A. Not on that particular piece of work, no.

Q. Who has reported to you? A. Mr. Chipman, who is in charge of the work.

Q. Has he reported to you? A. In what respect?

Q. In any respect? A. I get weekly reports from all the engineers; I see some of them.

Q. Well, why do you read any of them? A. They are more of a matter of record than anything else.

Q. Then you don't know by reading these reports what the inspectors are doing? A. Well, I am satisfied that our work is carefully managed in that respect.

Q. Don't you spend hours reading the reports of your subordinates? A. Indeed I do not; I haven't time.

Q. What do you do in the course of the day? A. Well, Mr. Moss, I get to my office anywhere from half past nine to ten o'clock; I generally leave at five — and during that period I am busy every minute of the day either with my correspondence and with plans and with conferences with the engineers of the different divisions.

Q. Were these reports directed to you? A. They are directed to me.

Q. Why are they directed to you? A. They form a very complete record of the progress of the work.

Q. The division engineer makes them? A. There is nothing to be gained by reading those reports.

Q. How do you keep posted on the work that is going on? A. From my relation to Mr. Ridgeway and Mr. Turner.

Q. Does he read those reports? A. I don't think he does. I don't think anybody does.

Q. What are they made for? A. They are made for a matter of record.

Q. What good is a record that is not read? A. We have frequently gone to the records of the old Rapid Transit Commission to get some of the weekly reports to find out what happened there and here.

Q. There might be something reported by one of your engineers, some fault, something that needed attention —how would you know it was in the report? A. Anything that I should know individually comes to me direct in other ways.

Q. Well, you simply take what people are willing to tell you by word of mouth? A. Mr. Moss, those men are honest men.

Q. I have no doubt of that, but, Mr. Craven, wouldn't those men be doing the work just as well if you weren't there above them? A. Well, possibly they would.

Q. What good are you? A. I guess I am no good at all. You have been driving at me long before I came on this committee, Mr. Moss; that is all this is meant for — it is a personal drive at me. I realize that fully; now you go right ahead. It is a brutal attempt to assassinate my character.

Q. What function do you perform in the operation of your Public Service position that helps the work? Now, please put it on the record — you are a pretty live man. A. I am advising the commission and I am advising my engineers all the time — constantly. I am seeing that the contracts are gotten out promptly and properly; I am going over the contractors' records when they come in when they make a bid on the work. My time is absolutely employed in good solid serviceable work every day, all day long. The same functions that any chief engineer performs in any large piece of work.

Q. You have said that I was after you before this committee was formed — will you please make yourself perfectly clear along that line? A. In your campaign speeches you made reference to the inefficiency of the engineers of this commission.

Q. With regard to what? A. I don't know.

Q. Are you clear on that — I think your are mistaken. I think your conscience has pricked you unduly. A. No; none of that.

Q. Mr. Craven, did I ever refer to you individually? Have you ever known me before this investigation? A. No; I have not.

Q. Have we ever spoken a word? Have I ever mentioned your name? A. But when you criticized the work of the commission, of the engineers —

Q. In what respect did I criticise the eciency of the engineers? A. Simply in your reference to the inefficiency of the engineers.

Q. In what particular? Was it in a single particular other than the Broadway and Seventh avenue accidents? A. You must have meant that criticism from the head down.

Q. You assumed that you were meant because you were the head of the force? A. I take my share of the responsibility.

Q. Was there one word said in any one of those addresses about the corps of the Public Service Commission? Did you read one word in any address of mine about the inefficiency of the Public Service Commission? A. I read it in the paper, but I don't know whether —

Senator Towner.— I think we had better finish this up. A recess will be taken until 2.30, and those witnesses who are under subpoena will please be present at that time. (Adjournment.)

Meeting called to order at 2.30 P. M., Senator Towner presiding.

Testimony of LESTER R. HELMER; examination by Mr. Frank Moss. (Witness is sworn.)

Q. You were employed by the Public Service Commission as inspector of masonry? A. I was.

Q. And you were on duty on Seventh avenue between Sixteenth street and Twenty-third street at the time of the accident there last September? A. I was.

Q. How long had you been on that division? A. Since September 21, 1915.

Q. You had just gone there then? A. No, sir.

Q. When did you go to that particular part of the work? A. September 21, 1915.

Q. And the accident happened the next day? A. It happened the 22d day of September.

Q. That was the next day? A. Yes, sir.

Q. Did you receive any special instructions as to your work? A. Yes, sir.

Q. And who gave them to you? A. The instructions I received were from Mr. Caronski or Mr. Veach.

Q. Which one? A. Mr. Caronski and Mr. Veach both.

Q. When did you receive those instructions? A. At nighttime; I was on a job and they wished to give me special orders.

Q. You mean you got them at different times? A. Yes, sir.

Q. Did you have any printed instructions? A. Yes, sir.

Q. Who gave those to you? A. They were sent down from the Thirty-fourth street office.

Q. What did those printed instructions say about your duties at such a point as that? A. I would inspect the blasting and mixing of concrete, check forms and inspect timbering, and other duties as were instructed me by the engineer in charge of the work.

Q. Well, had you any previous experience in timbering? A. I had to a certain extent.

Q. You were a masonry inspector? A. Yes, sir.

Q. Your business was to determine whether a cement was properly mixed and properly applied, wasn't it? A. Yes, sir.

Q. What do you — I mean to say what instruction have you had in mechanics connected with the combining of elements in timbering — what instruction have you had? A. I have had instruction in masonry.

Q. What kind of instruction? A. Masonry as far as the mixing and placing of concrete.

Q. I know, but how did you get it — go to any school? A. I don't understand you.

Q. What instruction did you have with regard to mechanics? A. Why, I had mechanics to a certain extent.

Q. With reference to strains and angles and all that sort of thing that enter into the question of strength and stability in wooden constructions? A. I never had that to any great extent.

Q. You had no studies of that kind? A. No, sir.

Q. What practical experience did you have in what might be called mechanics? A. I had five years' experience on the Barge canal work before I come down here, and experience when I come down here in the subway.

Q. What did you do in the Barge canal? A. I inspected concrete.

Q. Well, that wasn't timbering? What did you do in the subway with reference to timbering? A. I went through the cut every day when I was employed on that section and noticed where everything was — whether everything was stable.

Q. Well, how did you know what was in a stable condition? A. I could see if the posts supporting the I-beam were plumb,

were well placed and observe whether they had spreaders in between these posts — in between the twenty-four-inch I-beams.

Q. Well, who ever taught you anything about what was well placed? A. By observation and by test.

Q. How old are you? A. Twenty-six.

Q. Did you ever work as a carpenter? Did you ever put up a building or help put up a building? A. I have worked around buildings.

Q. But were they brick or frame? A. They were brick.

Q. Did you ever put up a barn? Or an outhouse? A. Well, I helped to a certain extent on my own home out in the country.

Q. How long have you been in New York? A. Why, I was born here in New York and have been here practically all my life.

Q. You didn't put up the outhouse in New York City, did you? A. Well, that was in New York, but not New York City.

Q. Did you pass a civil service examination for your position? A. I did.

Q. Did that examination touch the subject of timbering? A. It did to a certain extent.

Q. To what extent? A. Why, it asked regarding posts to be used of certain size and dimension, and what I deemed necessary as far as timbering is concerned to see whether it was well braced and constructed to hold a certain weight.

Q. Did you consider it was necessary to have these bents braced one against the other? A. Yes, sir.

Q. You considered that necessary? A. Yes, sir.

Q. Did you consider whether or not the braces ought to be bolted? A. Well, the braces were bolted to a certain extent.

Q. What do you mean by "to a certain extent"? A. Why, some places they were bolted and some places they were not, but braced.

Q. Well, what was wedged? A. Well, that's what I mean — they were not bolted, they were wedged.

Q. Sometimes the same sort of thing would be bolted and sometimes it would be wedged — is that it? A. Yes, sir.

Q. Why were some wedged and some bolted? A. I contradict myself there, the braces were bolted and the spreaders in between the braces were wedged.

Q. Did you consider wedging a safe practice? A. I did if they were wedged tight.

Q. Did you ever know one of the wedges to come out? Could they be jarred out? A. If they were braced and well nailed, they couldn't.

Q. Were the braces nailed? A. To a certain extent. In some places they were and in some places they weren't.

Q. Why were they nailed in some places, and not in others? A. I guess it was easy to be got at and at certain places —

Q. But why should you put in nail in a brace at a certain place? A. Why, to hold it firm.

Q. Why weren't nails put in the other places? A. Perhaps the other way of construction was seen to be better.

Q. You said "perhaps," by why did you allow some wedges not to be nailed? A. They were well braced

Q. Still they could be knocked down by some violence, couldn't they? A. If anybody were to go up there I suppose anybody could knock them out if they were nailed.

Q. But it would be harder to do it if they were nailed, wouldn't it? A. Perhaps it would, and perhaps it wouldn't. I never have tried to knock them out.

Q. Why didn't you? A. Because I didn't see fit.

Q. Why didn't you try whatever was necessary for you to understand your job? A. Well, the inspector of the material was supposed to see that everything was stable and well braced, and what would be my idea in going up there and knocking them out?

Q. Why, knock it out and put it back again. A. Well, that wasn't my idea of doing things at that time.

Q. Well, didn't it occur to you that if nails were used in some places they were used to make it strong? A. Perhaps they were.

Q. And didn't it occur to you that if nails were not used in other braces, those braces were not quite as good as the ones where the braces were nailed? A. So far as the inspection is concerned — if I thought they were well braced.

Q. You don't answer my question. Didn't it occur to you that the braces which were not nailed were not as strong as the braces which were nailed? A. No, sir.

Q. Why didn't that occur to you? A. Because if they were well braced and the wedges were put in tight, in my opinion they were all right.

Q. Were they all put in tight? Did you test every wedge that was not nailed? A. No, sir.

Q. Why didn't you? A. I had other duties to perform besides testing wedges.

Q. Well, in your division? A. In my division?

Q. Wasn't it your business to see that those wedges were in tight? A. As far as a close observation was not concerned, but not to test every wedge that was driven in.

Q. Did you ever test any wedge — try to move it? A. Yes; I have tried to move them with my fingers and with a hammer.

Q. Did you ever succeed? A. Sometimes; then I would push it back in place again and would tell the timber man in charge to look after that kind of work, if I saw fit.

Q. "If you saw fit"— didn't you see fit every time? Did you do it every time? Did you report to your superior that fact? A. Yes, sir.

Q. In writing? A. Not in writing — verbally.

Q. Did you report every loose wedge that you found to your superiors? A. Not every loose wedge.

Q. What was it that jarred them out? A. Sometimes the traffic, both on the street —

Q. Do you mean to say the traffic above jarred out wedges? A. Yes, sir.

Q. How many times did you observe that? A. I didn't observe it very many times. It was just while I was up there working underneath the decking and any heavy load would jar the wedges to a certain extent.

Q. Well, then, when you happened to be up near the decking when heavy loads went over, you noticed that the wedges were jarred? A. Yes, sir.

Q. And whenever you happened to be near where those loads would go over, you saw that? A. Yes, sir.

Q. Did you report that to your superiors? A. No, sir.

Q. Who did you report it to? Didn't you report it to the timber man in charge of the cut? A. I did report it to them if conditions weren't remedied.

Q. But didn't it occur to you as an inspector on the job that that was a dangerous way of wedging when loads passing over the decking might dislodge them? A. I didn't think it was such a dangerous way of wedging.

Q. What were the wedges to hold tight, the posts and uprights — what were they to accomplish? A. Why, the cars and wagons and the people that passed.

Q. Well, then, if the wedges came out, the post might come down? A. Yes, sir.

Q. Well, now, if you found that there were quite a good many wedges being used that were not put in tight enough, so that traffic shook them, why didn't you report that to your superiors? Did you ever report to them concerning this condition? A. They understood it themselves, and we were told to watch these wedges by our superiors.

Q. Well, did you watch them? A. Yes.

Q. Well, did you watch them all the time? A. Whenever I had occasion to.

Q. Well, any day you could have gone up there and seen wedges shaking? A. Any day that I didn't have any other duties to perform.

Q. Every time you went up under that decking you could see the wedges shaking? A. Yes, sir.

Q. Did you tell your superiors that that was a common condition? A. Yes, sir; they knew it.

Q. Do you say that Mr. Caronski knew that those wedges were being shaken by the traffic so that if he had gone up there he could have seen it too? A. Yes, sir.

Q. Well, wasn't it a fact that inasmuch as that form of construction had been accepted that you didn't consider it any part of your business to mix in with it? You thought the form of construction had been accepted by your superiors, and that that was all right? A. Yes, sir.

Q. And all that you were to do was whenever you had any time to see what wedges were knocked out and have them replaced.

isn't that so? A. Yes, sir; if I could improve them I would have told the superiors in charge.

Q. Did you tell the superiors that you could improve upon that wedging? A. No, sir.

Q. Now, it is quite possible that the falling down of that decking might have been caused by wedges coming out — isn't that so? A. Why, I don't know.

Q. But isn't it possible? A. Yes; it might have been possible.

Q. Well, now, you heard one of the engineers say, or you knew that Mr. Parsons said, the sagging of the tracks had something to do with the accident? A. I don't know anything about that as far as the sagging of the tracks was concerned.

Q. Well, Mr. Parsons suggested that when the tracks sagged they tended to pull the decking down with them. Now, don't you think that the coming out of the wedges might have been influenced by the action of that track? A. I don't think wedges coming out would influence it to any extent — wedges don't take up so very much room.

Q. It isn't the room they take up, but it is the "joggling," if I may use that term. Don't you think that those heavy tracks coming down to the decking and all the shaking of that structure would tend to shake out the loose wedges? A. That, perhaps, might account for it.

Q. Now, if those wedges had been tight, the thing might not have gone down; isn't that so? A. I could hardly say as to that.

Q. Now these wedges that you talk about, weren't those wedges that were put up at the top of beams that were laid diagonally against the posts, or against the I-beam? A. Yes.

Q. Each bent might have one or more timbers resting against it diagonally, catching perhaps in the flank of the I-beam, and then a piece of wood, a wedge-shaped piece of wood driven into the angle which would be made by the two planes, one of the supporting timber and the other of the I-beam — is that right? A. I don't fully follow you there.

Q. Well, now, tell me how these wedges were used — why they were put in and what they were for? A. They were driven in between all the posts — the wedges were put in to brace these spreaders, in between the twenty-four-inch I-beam and the posts

supporting the decking. They were all wedged in with these wedges.

Q. Can you show me on this picture here where a wedge would be used? A. See, these posts in here would be wedged in here, and these uprights here, and the posts down here, they are wedged up in between. Here's the twenty-four-inch I-beam. They are wedged up under that twenty-four-inch I-beam and the spreaders in between here, running north and south, were wedged in.

Senator Towner.— Is that on the top of the post — were wedges used except on the top of the posts? A. They were used at the bottom, too, in bracing on the bottom.

Q. (By Mr. Moss.) Well, where the square end of the post and the bottom would be on a diagonal by being tilted up, you would put in a wedge, wouldn't you? A. The posts had to be plumb first.

Q. I am speaking about the diagonally placed supporting beams. A. What do you mean, the twenty-four-inch I-beams?

Q. Don't mind about them — I am talking about the wooden posts that you prop up against an upright post. Now, when you lay it diagonally there is an angular space at the bottom, isn't there? What did you put in there? A. Nothing.

Q. Nothing at all? If the top of it came in contact with the plane surface, was anything put in there? A. No, sir. The wedges were put in between the posts on the top of the posts and at the bottom of the posts.

Senator Towner.— And were the posts anchored at the bottom? A. They had a form bottom.

Q. Were they anchored at all except sawed off and set on a base? A. No anchoring at all, they were wedged at the bottom.

Q. (By Mr. Moss.) Well, what did any of your superiors ever tell you with reference to these wedges and your duties? A. I was notified to go over these wedges and see that all of these wedges were tight and in place.

Q. Who told you to do that? A. Mr. Caronski.

Q. How did Mr. Caronski know the frequency of your examination of these wedges? A. Why, as far as we could tell by inspect-

ing the timbering, and when we inspected the timbering that included all the wedges.

Q. How did he know how much — how often you looked at wedges? A. We reported.

Q. Daily? A. Yes, sir; daily; the progress of all the work.

Q. What did you say to him about wedges? A. When we inspect timbering that includes the inspection of wedges.

Q. But you say that you discovered that wedges were shaken out by the traffic — I want to know what you said to Mr. Caronski? A. I didn't say anything about wedges being shaken out, but I just made a report.

Q. What did the report say? A. That on a certain day, whenever I had the opportunity, I inspected the timber.

Q. And what else — simply that you inspected the timber? A. The timber work.

Q. Did you say whether it was good or bad? A. I always said some of it was.

Q. Did he ask you about anything in particular? A. He found out from the reports I sent in.

Q. But your reports only said that you inspected them. Do you know whether he read your reports? A. Why, I don't know, as far as they are concerned, but I believe he did. I never observed him reading them.

Q. Did he ever talk to you about your own reports? A. Yes.

Q. Do you remember any such conversation? A. Why, not that I remember.

Q. Give me the last conversation you had with him about your reports before the accident happened. A. I don't remember the particular conversation we had. It was more indirectly as to the inspection of the work.

Q. I know, but what was it? A. Why, I couldn't state definitely just what it was.

Q. Did he ever ask you what you thought was the cause of this run? A. No, sir.

Q. Did you ever state what, in your opinion, was the cause of that run? A. No, sir.

Q. What do you think was the cause of that run? A. Why, from what I heard and what I saw at the time of the accident, I think it was caused, no doubt, by the heavy blasts.

Q. All right, there is a heavy blast which knocks out one or two or three bents; now, what made it run for 300 feet, and over? A. That I do not know.

Q. Haven't you any opinion? A. I couldn't state.

Q. Are you an engineer? A. No, sir.

Q. Haven't you ever worked as an engineer? A. No.

Q. Well, you may not be a graduate engineer, but you are an engineer. You have been an engineer, haven't you? A. Up state; yes.

Q. In what capacity? A. Axe manager and assistant engineer.

Q. Well, now, you must have some opinion. What made it run? A. Why, I couldn't state just what did make it run, because I wasn't there at the time of the accident.

Q. Did you go down and look at it? A. Yes, sir.

Q. What did you see? A. Why, I seen just how the timbers laid there.

Q. And you looked at it with more or less of a professional eye, didn't you? A. To some extent I did.

Q. And didn't the question occur to you what could have made this run after the blast — didn't it? A. Why, as far as my opinion was concerned, it was the heavy blast that caused that fall of these timbers and perhaps the sagging of the tracks which helped the posts to fall down in rotation.

Q. Well, did you notice whether the beams of one bent would be laying over against the beams of the next bent? A. Why, they just seemed to fall just like a row of dominos.

Q. And you knew there were tracks above, and you knew there were cars on those tracks, and you knew there was a vibration, didn't you? A. Yes, sir.

Q. They were not light cars, were they? A. No, sir.

Q. And they were apt to be crowded, weren't they? A. Yes, sir.

Q. And there were several theatres close to the Broadway point, weren't there? A. Yes, sir.

Q. And if some of those theatres had just been letting out there might have been more casualties? A. It was the Seventh avenue that I was in.

Q. But you knew about that Broadway, and all of you engineers knew about the heavy car track, and you knew of the vibration, and you knew that if anything happened the car track would sag down. Now, there were some very heavy trucks went over there shaking everything. A. Yes, sir.

Q. Did you ever know a blast to be covered? A. Yes, sir.

Q. What was it covered with? A. With a heavy mat and logs of wood.

Q. Now, some people have said it couldn't be done, and wasn't done. A. I observed it done in an open cut up above.

Q. But I am talking about this closed cut. A. No, sir, I never observed anything there in the cut at all — down in the shaft.

Q. Did you ever observe how the pieces of rock flew down into the cut? A. Yes, sir.

Q. Did they strike the decking? A. Not that I know of.

Q. Didn't they ever indent the decking? A. No, sir; not that I observed.

Q. Did you ever see any of the laboring men carrying beams? A. What do you mean, on their shoulders, or how?

Q. In the subway, on their shoulders, or any way? A. Yes, sir.

Q. Did you ever see any of them move beams from one place to another? A. What is that?

Q. Did you ever see them take supporting beams from one place and put them in another place? A. You mean that had been placed there?

Q. Yes. A. No, sir.

Q. Did you ever see any places where spreaders were absent? A. Why, one place there was one removed; that's all that I ever noticed; the other was to facilitate getting a point for the engineers — that was all.

Q. Just prior to this accident had any of the timbers been removed in order to let steel construction go in? A. Not to my knowledge.

Q. Hadn't any steel work been put in there within a week or two before the accident? A. I believe it was.

Q. And it was going in all the time, wasn't it? A. Well, no—

Q. Well, now, when they put the steel in, didn't they incidentally remove some of the braces or some of the bracing posts? A. Yes, sir. But it was immediately put back.

Q. At the time of this accident, were there any places where spreaders had been removed to let in the steel work which had not yet been placed? A. Not that I know of; no, sir.

Q. Did you know there were foremen who threw up their jobs there? A. No, sir.

Q. Did you ever know there were foremen of the United States Realty Company down there who only worked a couple of days, or a week or two? A. No, sir.

Q. Were you acquainted with the foremen of the timber? A. I was; yes, sir.

Q. Did you know them — did you know him? A. I knew him just by his first name and seeing him working down there?

Q. Didn't you know that there was a complaint among those men of a shortage of timber? A. No, sir.

Q. Didn't you ever hear it? A. No, sir.

Q. What superior first spoke to you after the accident? A. I think it was Mr. Veach.

Q. What did he say to you? A. He told me to report for duty that night.

Q. And when next did you speak with him? A. I spoke to him that night. He was there all the time.

Q. What did he say to you? A. He instructed me as to the duties that I was to perform — to watch the car and see that it wasn't removed.

Q. Did you simply follow those instructions? A. Yes, sir.

Q. Were you called into anybody's office downtown with reference to the accident? A. I was called down there at the district attorney's office, I believe, to see Mr. Follette.

Q. You made a statement to Mr. Follette, a copy of which I have here? A. Yes, sir.

Q. Well, did you testify at the coroner's inquest? A. No, sir.

Q. Were you called into anybody else's office to make a statement? A. No, sir.

Q. Were you called into the chief engineer's office to make any statements? A. No, sir.

Q. Were you called into the secretary's office of the Public Service Commission to make any statements? A. No, sir.

Q. Were you called into the division engineer's office? A. No, sir.

Q. Were you called by any of the Commissioners to make any statements? A. No, sir.

Q. So far as you know, did the Public Service Commission make any investigation of this accident? A. To my knowledge, I don't know.

Q. And you were one of the inspectors that was on the job at the time the thing fell? A. I wasn't there at the time it fell.

Q. Well, you were on duty at that period? A. Yes, sir.

Q. What superiors in the Public Serice Commission ever asked you what you knew about the accident? A. Why, Mr. Caronski asked me what I thought caused the accident, as far as my opinion was concerned.

Q. And what did he say to you? A. Just what I told you before.

Q. And where did that conversation occur? A. That took place at the scene of the accident; that was at nobody's office.

Q. Did you hear of any employe, engineer, or inspector being called into anybody's office in the Public Service Commission and being asked as to how he had been inspecting, how he had been performing his duty, and what persons might or might not have been at fault? A. No, sir.

Q. Did you hear of any effort being made in the Public Service Commission to get an opinion from the men on the job whether the structure was at fault? A. Why, as I said before, they asked me my opinion — Mr. Caronski asked me my opinion, as far as I was concerned.

Q. Well, did you realize, Mr. Helmer, that so far as that work was concerned there, the whole function of the Public Service Commission depended upon you? A. Yes, sir.

Q. Weren't you what might be termed a cog in the Board's wheel at that particular point? A. It was my duty to see — to inspect —

Q. I know; but if you and the other inspectors did not see and report the defects, the Public Service Commission wouldn't know of them, would they? A. Why, no, sir, except as some other engineers.

Q. But the inspectors are the eyes of the engineers, aren't they? A. Why, to a certain extent.

Q. The engineer may look, but the inspector must look? A. Yes, sir.

Q. You are like the common sailor in the turret, behind the gun, aren't you? A. Yes, I believe so, if that's a way of expressing it.

Q. The gun can't be fired without him? A. I guess not.

Q. What is Mr. Caronski's official position? A. Assistant engineer, and he has charge of the contracting.

Q. Did any of your superiors ask you what you had told the district attorney? A. No, sir.

Q. Did you have any conversation with any of your superiors before you went to the district attorney's office? A. No, sir.

Q. Then, so far as you know, they took no interest in what you said down there? A. No, sir. They might have taken an opinion, but they weren't going to say anything that would alter our opinion.

Q. It isn't a question of altering your opinion, but did they ask you afterwards what you had stated down there? A. No, sir.

Q. (By Senator Towner.) Was this work the first that you had done in inspecting construction? A. No, sir.

Q. Where did you do your first work? A. Up on the Barge canal.

Q. I mean subway construction? A. This is my first as far as subway construction.

Q. And that was the first timber construction work that you had done? A. I had similar construction work on the canal.

Q. Well, you said these wedges were properly braced; what bracing did they have — the lower wedges on which the I-beams

rested? A. They had these spreaders in between. On the sides they had these struts to brace them.

Q. (By Mr. Moss.) What other inspector worked with you directly on the job? A. Mr. Doyle, Mr. Moran, and that's all, I believe, was on that particular section.

Testimony of MR. EDWARD J. DOYLE; examination by Mr. Frank Moss. (Witness is sworn.)

Q. Mr. Doyle, how old are you? A. Thirty-three.

Q. You are an inspector of masonry, too? A. Yes, sir.

Q. And you passed your civil service examination as an inspector, didn't you? A. I did.

Q. Did you ever pass an examination in carpentering? A. No, I never passed an examination in that.

Q. Have you had any experience in that? A. I did.

Q. What experience? A. I was in the building line about twelve years, in masonry and other different kinds of construction.

Q. You were working in this section where the accident occurred on Seventh avenue, weren't you? A. Yes, sir.

Q. You were not on the Broadway side at all? A. No, never was on the Broadway side.

Q. How near the time of the accident were you really there? A. I was there that morning when it happened, at the very time it happened — not at that location, but about two blocks away.

Q. North or south? A. South.

Q. Then it came down towards you? A. Yes.

Q. Did you see where it stopped? A. Afterwards I did.

Q. You weren't up to the point where it stopped? A. No.

Q. What, in your opinion, was the cause of that running from the place of the blast down to where it stopped? A. I never formed any opinion on it, because I didn't know that much about it.

Q. Well, haven't you any opinion now? A. No. It was something unusual; that never did happen before in the history of the subway.

Q. Did you know anything about the blow-out that occurred somewhere in that neighborhood a short time before the fatal accident? A. I knew of one.

Q. Where was that? A. It was, if I remember right, about north of Twenty-third street, somewhere around Twenty-fourth street.

Q. Did that run at all? A. No.

Q. How much of the structure was knocked down? How many bents? A. There wasn't any of the top construction knocked down. In fact, I didn't go down to look at it.

Q. Then you don't know? A. But I went down there on the top of the decking.

Q. Was there a cartrack above on that? A. Yes.

Q. Now, between that one, where there was no running, and the fatal one, where there was a run of 300 feet, something like that, there must have been some cause for the fatal run. Did you ever form any opinion? A. I never did.

Q. Don't you consider yourself competent to have an opinion? A. It isn't that I consider myself competent, but I didn't have to form an opinion then.

Q. But could you help forming an opinion? A. I didn't try to form an opinion.

Q. Why didn't you try? A. Why ought I?

Q. Did you think it was better for you not to try? A. No, I never entertained such an opinion either way.

Q. Well, haven't you an opinion down in the back of your head about the cause of this running? A. No.

Q. Why haven't you? A. I don't know.

Q. But you ought to, because you are a paid employe of New York and you had been inspecting this sub-structure that fell down —that's why you ought to. A. Well, by me making an opinion, that wouldn't help the city any.

Q. Why, I am not asking you for that; I am asking you for the facts — I am not asking you to get sassy. Is it possible that you have survived to this time and have no opinion as to the cause of that run? A. I have.

Q. The reason I pressed the question was because it seemed as though you were not expressing yourself freely.

Q. (By Senator Towner.) You worked in building construction how many years? A. Twelve years.

Q. Timber construction, you said? A. No, I didn't say I worked all that time on timber construction. I worked on various constructions.

Q. Any of them timbering construction? A. Including timbering, yes, sir.

Q. How many years at that? A. Well, during the whole twelve years at different times.

Q. (By Mr. Moss.) Where did you work on any construction of buildings that had timber in them? A. The Grand Central depot.

Q. (By Senator Towner.) And you saw their temporary construction, did you? A. Yes, sir.

Q. And you passed the civil service examination, and you saw that temporary construction there — well, why didn't you form an opinion then? A. I didn't think it was necessary.

Q. Did you see the structure before the accident? A. I inspected it before.

Q. You didn't see it afterwards? A. I didn't inspect that part of it afterwards.

Q. But you did see it afterwards? A. I saw it before, and I saw the mess there after it — certainly.

Q. And you say now you haven't any opinion as to what caused it? A. No, I have not.

Q. Isn't it a fact, Mr. Doyle, that you fear that if you express an opinion as to what caused that run — that fatal run — that you might involve yourself in negligent inspection? A. No, I can't say that, either.

Q. You can't say it? Well, do you mean to say it isn't so? A. No, it isn't so.

Q. Why isn't it so? A. Well, as I said, this was something unusual to happen.

Q. Certainly it was unusual; that's the very reason for trying to find out what the cause of it was. Now, did you notice whether some bents fell against other bents? A. Well, they seem to have fallen all one way.

Q. Therefore, some force moving in one direction must have caused the accident? A. Still there were a number of them that remained upright.

Q. Perhaps they were braced stronger than the others and they resisted the attack — is that so? A. Well, they resisted, of course, the attack.

Q. Didn't they go down like a row of dominos? A. Some of them did, and other remained upright.

Q. Do you mean to say that the wave went down to a certain point, then there were a number of bents left standing, and then it was resumed and went on again? A. There were some bents left upright.

Q. Why was that? A. I don't understand that.

Q. Do you think it was an act of God? A. I don't know anything about God in that way.

Q. Well, what in your opinion caused those bents to stand, which you say stood? A. I have no opinion on that.

Q. Well, aren't the bents which you say remained standing bents that were near the permanent structure? A. No, I didn't say bents stood — I said there were some posts that remained upright.

Q. A bent, as I understand, is the entire post with the beams on it, and then the posts above that — they formed four upright posts with beams lacing them together? A. Yes, sir.

Q. Well, now, there was no entire bent left standing? A. No, but occasionally a post was left standing.

Q. Well, that doesn't interfere with the idea of some force running along from the north toward the south over this structure? A. It is evident that there must have been a force that they all felt that way; they all looked that way after they were on the ground — on the bottom of the cave.

Q. How long were you at work inspecting that particular part of the subway? A. That was the twenty-second day.

Q. And you had been working on the subway before that? A. Well, I worked on top all along there, and on the bottom.

Q. How long had you been working altogether upon that construction? A. I presume right around a year at that time.

Q. What instructions did you receive from your superiors as to what you should do? A. In regard to the work, the construction work that was going on, such as concreting, putting up steel, and seeing that it was checked and plumbed.

Q. Did the district attorney ask you what instructions you had received? A. I believe he did. In fact, I don't just recall.

Q. Did he ask you what reports you had made? A. I don't remember that.

Q. Did he ask you what, in your opinion, was the cause of the accident? A. No, I don't think so.

Q. Did he ask you what reports you had made to your superiors in reference to the accident? A. I don't know whether he asked that or not.

Q. Did you ever see anything the matter with the sub-structure before the accident? A. Yes.

Q. What did you see was the matter? A. I saw on one occasion where there was a section there that didn't look what it ought to be, and I immediately got the timber foreman, that was Mr. Mitchell, to remedy it.

Q. What was the matter with that section? A. Well, they were doing some work there, they took two uprights, they had interlaced the others, the beams on the other side, so I looked at it and I didn't like it, and I had Mr. Mitchell put timbers in where they ought to be.

Q. How many timbers — how many bents did that include? A. There was two timber posts on one side on the nd.

Q. How many times did you report something the matter with the work? A. I don't remember.

Q. Did you ever report anything in writing? A. I may have reported on that occasion.

Q. Did you or did you not report anything wrong with the work? A. That once is about all I ever saw anything wrong.

Q. Did you notice these wedges? A. I noticed them.

Q. Did you hear the testimony of a former witness? A. Yes.

Q. Do you agree with him as to the wedges generally? A. Well, they have become loose.

Q. Did you see anything in the testimony of the former witness, Mr. Helmer, which you would contradict? A. No, I wouldn't contradict anything that he said.

Q. Or would you testify anything different to what he said? A. I didn't pay particular attention to all his testimony.

Q. Well, you spoke about the wedges being lost — you observed that sometimes, didn't you? A. Yes, sir.

Q. And how did you come to see that? A. By going over it and looking for it — we would come across them in going over the work.

Q. Well, that's something you wouldn't easily see if you were just walking on the bottom? A. Well, I wouldn't necessarily say that, the structure was in divisions. Wedges need not be real tight.

Q. Is a wedge any use at all? A. Yes, sir.

Q. And you say it wouldn't make any difference if it was loose or tight? A. I say it may not.

Q. Well, you might just as well not have them? A. Well, I don't know just the way Mr. Helmer testified the wedges were used.

Q. He has testified about the wedges at the top of the posts. A. At the top of the posts. The beams rested, if I remember rightly on to the twelve uprights, with no wedges under them.

Q. Where were there any wedges? A. Upon the horizontal pieces.

Q. Did you ever see them loose? A. Yes, I believe I did.

Q. What made them loose? A. The vibrations from the street — wedges will becomes loose in that way.

Q. Did you ever see them nailed? A. No.

Q. Never saw them nailed? A. No, they don't nail them — not to my knowledge.

Q. Were you called into anybody's office and asked about your inspection work and asked about the sub-structure and asked about any opinion as to the cause of the accident or anything whatever about the accident after it happened? A. No, not outside of the district attorney.

Q. You went into the private office of the assistant district attorney, Mr. Murphy, didn't you? A. Yes, sir.

Q. And he took this statement from you? A. Yes, sir.

Q. And you didn't appear before the coroner's jury, did you? A. I was there after they called upon me.

Q. And you didn't testify, and so far as you know there was no inquiry held by the Public Service Commission? A. No, I don't know whether there was or not.

Q. There was no inquiry as to whether any employee of the Public Service Commission had been negligent so far as you know? A. No stenographer took down anything.

Q. What opinion did you give — you were asked for your opinion, weren't you? A. I said I didn't know anything about it.

Q. (By Senator Towner.) Did you have any idea? A. No.

Q. Didn't have any? A. No, I know that a blast occurred —

Q. But did you have any impression? A. No.

Q. You had no thought as to what caused it? A. No.

Q. Did you ever have any thought about it? A. No.

Q. Did you think about it? A. No.

Q. You didn't think about it at all? A. Of course, I thought about it.

Q. But what was the result of that thought? A. I don't know.

Q. Do you think you are alive? A. I know I am.

Q. That's fine.

Q. (By Mr. Moss.) Were you examined in timbering before you were put on that job? A. That was covered in the examination — that was a part of it.

Q. I mean did anybody outside the Public Service Commission that put you to work down there ask you what you knew about it? A. Yes.

Q. Who? A. Well, now —

Q. Now, before you were employed, or at least before you were put upon that work of inspecting, did any superior man ask you what you knew about that sort of work? A. Well, I was notified to go to the office, the LaSalle office at Thirty-fourth street. I went there and I met Mr. Veach, and he asked me questions.

Q. What did he ask you? A. He asked me if I was familiar with subway work.

Q. Did he really ask you that question? A. He may have asked me that question — I don't just remember now what he asked me.

Q. That lead to what? A. Whether I had any experience in that line.

Q. What did you answer him? A. I said I had had experience in timbering.

Q. Well, what else? A. I don't remember now.

Q. Did anybody tell you in words or in substance that this was a very important post you were being put on, that the lives of people depended upon your vigilence, and that you must watch this thing carefully, and that you must look out for certain things? A. Yes.

Q. In other words, to make a careful survey of all conditions? A. Yes, sir.

Q. Who did that, Mr. Veach? A. Yes, sir.

Q. What did he tell you you must look out for? A. Well, I don't just remember what he told me.

Q. Well, now, supposing you were on the job to-day — what is it that Mr. Veach told you to look our for? A. Why, for timber work and construction.

Q. But what about it? A. Well, I was to look out for the type of construction.

Q. What type of construction? A. That was being put in.

Q. What about it? A. I was to inspect the concrete as it was being placed, the mixing of it, the material delivered on the job, timber work.

Q. Well, what about the timber work? A. To see that it was safe by inspection.

Q. Well, you don't know anything about the principles of safety — you can't form a theory. What were you told to look out for — what particular things? A. Why to see that the timbers were plumb and things of that character.

Q. Well, that's the upright posts? A. And the other timbers that were braced — to see that bents were in ever ten feet, etc.

Q. Are you on the job now? A. I am on part of that job.

Q. What are you doing? A. Concrete work.

Q. Are you inspecting timber, too? A. No.

Q. Isn't there any timber being used? A. There are other inspectors there.

Q. When were you taken off of timber work? A. I haven't been on it since the first of December.

Q. Where are you inspecting concrete? A. On Seventh avenue.

Q. Does that mean the mixing of it? A. Yes.

Q. And the placing of it? A. Yes.

Testimony of Mr. MORAN; examination by Mr. Frank Moss. (Witness is sworn.)

Q. Do you inspect timber? A. When occasion requires.

Q. You are on the job now, are you? A. Yes, sir.

Q. Where are you doing that now? A. Twenty-second street.

Q. Were you on this Seventh avenue job? A. My district went up as far as Twentieth street.

Q. It didn't include the run? A. No, sir.

Q. Where were you at the time of the accident? A. Well, as near as I can judge, I was down around Sixteenth street.

Q. So that you came up? A. I came up.

Q. Well, now, you were forunate enough not to have that run on any part that you had been inspecting? A. Yes, sir.

Q. But did you go up and look over the ground afterward — after it had fallen? A. Yes, sir.

Q. What did you see? Now tell us; we haven't had anybody give us a picture of that. A. It is pretty hard to describe.

Q. Well, now describe it so we can put it on the record, please.

A. There were a couple of ladders leading down from the side of the street where the National Cloak and Suit Company is, and all of the people had gotten out of the cars. I didn't see any one in the cars. And there were firemen and policemen and laborers and lots of others down there working and moving timber to get those men, that were buried, out. Everything was turmoil — I can't give every little detail that occurred.

Q. Well, you had controlled the district up to Thirtieth street before the accident on night shifts? You were on night shifts over this very district, weren't you? A. No, sir.

Q. Well, then, you did have some responsibility? A. For a month or more previous to the accident I hadn't been up to that place. I hadn't been up there in over a month.

Q. Well, what was the difference that you observed between the time that you saw the accident and the time that you had patrolled at night? A. The whole street was down.

Q. Was the construction the same? A. I suppose it was the same.

Q. Did you see any difference? A. Well, I couldn't tell; they were all laying in a heap down there.

Q. But you could see where it came to, and you could see where it came from, you could see both ends? Where there were bents left standing you could see both ends, could you not? A. Well, if I understand you correctly —

Q. Did you look at the bents that were not knocked down, and was there any difference in their appearance from the way they looked when you had seen them at night? A. I couldn't remember that — that was so long ago.

Q. Well, have you any recollection of any difference that impressed you? A. No.

Q. What impressed you as the cause of the running? A. That would be pretty hard for me to answer.

Q. What is your opinion? A. I think the blast and — I didn't hear the blast.

Q. That started it, but why did it run from the point of the blast? A. The way I think it was — I think it was caused partly — almost entirely — by the car.

Q. Well, why should a car knock down the posts that had been built to support the cars? A. Well, the blast fire would be likely to start it somewhat.

Q. Well, why didn't it run from the blast that shot out some little time before? A. I couldn't say that I know.

Q. Did you know anything about that form of blast? A. I heard about it.

Q. Were you there at the time? A. No, sir.

Q. What experience have you had? A. I have been on subway work for going on to about four and a half years.

Q. How old are you? A. Twenty-five.

Q. Who did you work for before you came to this work? A. The state highway department.

Q. What capacity? A. Axe man.

Q. Then you have got some engineering knowledge, some little engineering knowledge; you have worked under an engineer; you are in training for an engineer, aren't you? A. I might say that.

Q. What work did you do in the subway? A. I was on it two years and ten months upon work on section fifteen.

Q. Where was that section? A. On Logan street.

Q. Tell us about that section? A. It is very difficult to describe. It started down below 138th street and there were two branches, and one went through 137th street and the end was about Alexander avenue; and the other branch went up Mott avenue and in through the park and entered about 50th street.

Q. Is that the section that runs under the Harlem river? A. Yes, sir.

Q. Now, I want to ask you what instructions you received from your superiors about the work you were to do in inspecting the subway anywhere before this accident happened? A. Well, the supervision of construction and taking care of inspection of concrete, placing and mixing of same, looking out for some of the steel construction and to look over the timbering.

Q. Well, you never passed an examination in timbering, did you? A. Well, not an official examination.

Q. But what experience did you have in timbering? A. Well, when I was up on the Mott avenue job I was assigned to some work of that sort.

Q. How long were you doing that? A. I couldn't just recall that now.

Q. Did you have some experience in carpentering? A. No, sir.

Q. Now, I ask you again for any special instructions that your superiors gave you with reference to the looking at that timber of the United States Realty Company in the interest of safety?

A. As far as I can recall it, I couldn't say, but at different times I have been down with my superior who showed me the method of doing the work, the method that was being followed.

Q. Where did he do that? A. I think it was at the Nineteenth street shaft.

Q. Who took you down there? A. Mr. Caronski.

Q. When did he take you there? A. I couldn't just state.

Q. What did he say to you? A. Well, he showed me the method they were using.

Q. What did he say about the method? A. He pointed out the size I-beam to use, the posts that they were using, the timbers on the top; told me the size of them.

Q. Well, what else did he say? A. He told me to see that it was carried on in a safe condition.

Q. What did he tell you was safety? A. I don't remember him saying anything.

Q. You don't remember it? A. No.

Q. Well, you didn't have to go down to the Nineteenth street section to see the I-beam and the posts, did you? You could see them anywhere, couldn't you? A. Well, it was a big help.

Q. Well, you went down and saw the same posts and the same I-beam and the same little posts on top? A. Oh, yes.

Q. You saw all that? A. Yes.

Q. Now you say that was a help to you. What did he tell you that was a help to you? A. I didn't say anything was a help to me. I said it was a help for me to go down there and for him to show me those details.

Q. Well, what did he show you that was a help to you? A. Generally explained everything to me.

Q. What did he explain? A. I don't remember.

Q. You could see the size of the I-beam anywhere; you could see the little post on top anywhere — now he showed you the same thing you had seen elsewhere. Well, what did he say to you that was a help to you? A. He showed me the spacing, the way ther were spaced.

Q. Well, how was that, tell us what did he say? A. Well, I couldn't repeat that.

Q. I don't care about the words, but the substance? A. Well, I repeated it as well as I could.

Q. Did he say it was a safe form of construction? A. Well, I could say he did.

Q. Did he say it was a safe form of construction? A. He told me that was the method.

Q. Did he tell you that was a safe method?

Senator Towner.— Did he tell you yes or no?

Q. (By Mr. Moss.) Did he tell you there were any points of danger in it? A. He didn't mention any.

Q. Did he tell you there were any points in that method that ought to be watched carefully so that it would be safe? A. He told me to watch that the heading beams always had a good bearing on the rock.

Q. But that you have go to do any time, haven't you? Whenever a beam is bearing on a rock, you have got to see that it has a good bearing, haven't you? A. Yes, sir.

Q. Did he tell you there was anything in this kind of construction that needed to be practically watched in order to mbake the construction safe? A. Nothing in particular that I remember.

Q. Did he tell you that that I-beam might act like a hinge, if it wasn't well blocked up? A. Act like a hinge?

Q. Tell you that that I-beam might turn over if it wasn't well blocked up? A. I know that myself.

Q. How did you know that? You told me you knew it yourself — that it might turn over if it wasn't well blocked? A. By my own observation and common sense.

Q. Well, that's a construction that ought to be watched pretty carefully, isn't it? A. Certainly.

Q. Well, did Mr. Caronski tell you that? A. I can't remember him pointing that out to me.

Q. Did he tell you anything else that was dangerous about that form of construction? A. Not to my knowledge.

Q. What would prevent that I-beam from turning over? A. By putting a couple of struts from one beam to the next beam.

Q. Was that done? A. As far as I know, it was.

Q. Was it ever not done? A. I don't remember that exactly.

Q. Didn't you report sometimes when it was not done? A. I said it was not done at times. That wasn't that spreader that I was talking albout; that was the lower one.

Q. Did you hear Mr. Helmer's testimony about wedges? A. Yes, sir.

Q. Did he testify anything that wasn't true, so far as you know? A. I don't know about that locality.

Q. Well, about your own locality? A. I have never seen any wedges drop out — I have seen loose wedges.

Q. Common, wasn't it? A. Well, I couldn't say common.

Q. Did men ever go over them and tighten them up? Did you ever order any tightened up? A. Why if I saw any loose I would certainly order them tightened up.

Q. What loosened them? A. Well, vibration, excessive traffic. Well, they might have been moving heavy timber and knocked them out of plumb — that would loosen the wedges.

Q. That wedge business is a loose spot, isn't it? A. Well, it is the only thing you can do.

Q. I know, but it is a weak spot. A. It is a universal practice.

Q. Well, it is a loose spot, isn't it? A. I wouldn't say that, because it is a universal practice.

Q. Well, isn't it a weak spot, even if it is a universal practice? Isn't it a weak spot that everybody has to protect? Isn't that wedge place a weak spot that has to be protected? A. If you didn't put a wedge in there you would have a space in there.

Q. And things would be inclined to loosen up all around? A. You have to keep tightening them up all the time.

Q. And you are still on the job — where are you? A. Sixteenth street.

Q. What are you doing? A. General supervision.

Q. Including timbering? A. Yes, sir.

Q. Well, now, I want to ask you whether you were called upon to make a statement by any of your superiors after that accident? A. Only the district attorney.

Q. And you didn't testify in the inquest, did you? A. No, sir.

Q. Did any of your superiors ask you what you had told the district attorney? A. No, sir.

Q. Who did you tell? A. Mr. Van Rensselaer.

Q. Well, you told Mr. Caronski on the job? A. Yes, sir. Just as a matter of conversation.

Q. So far as you know, there was no inquiry made? A. What do you mean by "inquiry"?

Q. An investigation. A. Oh, yes, I understand. I don't know of that.

Q. Now, what, in your opinion, caused that accident? A. I consider that the heavy blasts — of course, I didn't hear the blasts

and I can't say how heavy — combined with the car, as the car passed.

Q. What about the car? A. What's that?

Q. What about the car? The car dropped in, didn't it? A. I didn't see it.

Q. Well, didn't you see the car in the excavation? A. Yes, sir.

Q. And the run was south of the car, wasn't it? A. It was south or north.

Q. The car didn't stop it, did it? A. No, sir.

Q. It went right on beyond the car? A. No, sir.

Q. Well, why didn't it run on beyond the car? A. It got started up there before they could stop it —

Q. Well, what stopped it? A. The permanent structure.

Q. It would have been running yet if something hadn't stopped it? A. Yes; possibly.

Q. Doesn't that show you there was something the matter with the sub-structure, something the matter with the timbering? Isn't that so? A. Possibly, but I wouldn' say that it was.

Q. Weren't you relying on the contractors? A. I don't know what the other men do. I know I go over the work.

Q. Did you knock the work? A. I tested the wedges every time I passed them, to see if they were loose.

Q. Isn't it clear to your mind that there was something the matter with the timbering which you inspectors didn't discover or didn't report? A. That would be hardly fair for me to say that, because I don't know.

Q. But you are an inspector and you are intrusted by the public with this very important function, and I ask you if it isn't your opinion that the progressive collapse of that sub-structure was due to some fundamental defect which your inspector shad not discovered or had not corrected? A. I wouldn't like to say that because there are other structures still standing as they were, so far as I know, that are the same as that.

Q. And isn't that just the reason to believe that at that particular point down to the permanent steel work there was something fundamentally defective which should have been discovered?

Senator Towner.— Was there? Answer!

Q. (By Mr. Moss.) Do you know why this matter was hushed up — stopped? A. I didn't know it was.

Q. Do you know why the district attorney and everybody stopped when there was lots of engineering testimony available and testimony of lots of people who had seen these conditions? A. I didn't know that it was stopped.

Q. Well, you didn't think it went on, did you? A. I didn't know.

Q. Well, you knew that you hadn't testified before the coroner, didn't you? A. They didn't call for me.

Q. You were in court part of the time, weren't you? A. No, sir; I wasn't.

Testimony of Mr. MURPHY; examination by Mr. Moss.
(Witness is sworn.)

Q. Mr. Murphy, you are one of the inspectors? A. Yes, sir.

Q. What is your age? A. Twenty-seven years.

Q. Did you have any experience in timbering? A. Yes, sir.

Q. What was it? A. On the construction of the Yonkers tunnel sewer.

Q. How long were you on that? A. About a year.

Q. How deep was the cut? A. Sixty feet from the shaft.

Q. What kind of timbering construction was used? A. Well, I was on the shaft construction.

Q. Well, how long a section did you have to cover there? A. Well, I was on all the preliminary work — that is about a mile long.

Q. Are you an engineer, practically speaking? A. Yes, sir.

Q. In what way? A. I have no title as an engineer; I am an inspector and passed several examinations with the city as superintendent of highways and sewers inspector and public work inspector, etc.

Q. You have worked with engineering forces? A. Yes; for twenty years.

Q. Practically assistant engineer? A. Practically.

Q. How long were you on this subway section? A. Since June, 1914.

Q. You were in the very section where it happened; where the accident happened? A. From Twenty-fifth street north.

Q. How long were you on that? A. Well, about a year.

Q. Were you there the day of the accident? A. Well, on the section, yes.

Q. Did you see the accident? A. No, sir.

Q. Did you see the scene of the accident after it happened? A. Yes, sir.

Q. How long after? A. Well, maybe forty minutes after it happened.

Q. What did you see? A. Well, when I arrived there I saw this roadway all down at the bottom of the excavation, from five feet east and west of the curb lines, between Twenty-fifth street and half-way between Twenty-third and Twenty-fourth streets.

Q. Did you notice the appearance of a southly movement throughout the mass? A. Well, some slight appearance in that direction.

Q. Well, what slight appearance? A. Why the permanent steel was laying south.

Q. It ran to the permanent steel? A. Yes, sir.

Q. And you saw the place where the blast had occurred? A. Yes, sir.

Q. The beams were all down? weren't they? A. There may have been a few posts standing, but everything else was gone, only north of that.

Q. And did you notice that one bent had struck another one and gone down? A. That's about the way it was.

Q. You were satisfied that the initial cause was the blast? A. That was one of the causes.

Q. What other cause was there? A. That was the main cause.

Q. But you said there was another cause — now, there is something in your mind, and I want it. A. There were very slight causes.

Q. Never mind how slight they were, what other causes are in your mind? A. When they were going to blast, they always sent men on top to flag the surface cars.

Q. What had that to do with the caving in; the flags didn't have anything to do with the caving in? A. Well, I believe that in this

particular case one or two cars ran beyond the flagman, and probably the blast. Later one of the blasts struck one of the I-beams which started a slight movement.

Q. You think that a piece of the rock tilted an I-beam by hitting it, so to speak? A. It might have.

Q. And what then? That let the whole thing down at that point, didn't it? A. Yes, sir.

Q. That I-beam could be tethered, couldn't it? You said the blast hit the I-beam — what did the blast do to the I-beam? A. Why it gave it a severe shock.

Q. It was put there to stand a shock; now, what made it go? A. I can't say. I can't give any opinion.

Q. Now, we can understand, Mr. Murphy, how the blast might have knocked out the bent that was right in front of it but what, in your opinion, was the cause of the running from that point? A. Well, there might have been a brace or so off.

Q. Well, would one brace or two off have been sufficient to account for that long run? A. I only say that all these things added together and happening at the same time were the cause of the accident. I can't give any opinion as to just what caused it.

Q. Haven't you an opinion that there was something the matter with that sub-structure? A. No, sir.

Q. What could have been the matter with that sub-structure to cause that impulse to run along as far as it did? A. What could have?

Q. What could have been the cause — were the bents braced against each other properly? A. I don't know. I didn't go into detail on that.

Q. Did you make a statement to the district attorney? A. Yes, sir.

Q. Did you testify in the coroner's inquest? A. No, sir.

Q. Were you called down to the Public Service Commission and asked what you knew? A. No, sir.

Mr. Moss.— While we are waiting, I want to read two or three paragraphs. This article was written by Percy E. Barber, mining engineer of the editorial staff. He says: "The rock blasted is a hard but brittle rock, which breaks short of nothing, being

traversed by joint planes. The shooting out of a timber is a forgiving thing, either in a mine or a New York subway, but if a little blast resulted in the destruction of an entire stope, the mining engineer would not consider the matter excusable. One pedestrian was killed —(this is the Broadway accident)— and several were seriously injured. The point of collapse is directly in front of a theatre, and four or five other theatres are within a radius of 300 feet. Had the collapse occurred half an hour later results would have been more serious. The two accidents, causing much damage and loss of life, have occurred through overlooking the precautions taken by the miners in every-day work, when confronted by similar problems. It is significant that both of these accidents occurred in portions of the subway that are being built by one contractor. The process is analogous to many operations in mining. The problems confronting the subway engineers were no different from what the mining engineer has to meet all the time. Indeed they were of a very ordinary character."

Summarizing: "Any mining engineer would pronounce the recent subway case to be due in one case to shooting out timbers and in the other to run of ground, both resulting in disastrous results, owing to bad timbering. In the case of the second accident, the subway trench was being cut through mica, the sheeting of the schist passing directly through the trench. As the trench caved, the schist had the natural tendency to slit off on one side. This was recognized by the subway engineers, who tried to prevent the slides on one side by drilling holes into the rock and driving in steel bars — spiking down the rock, so to speak. On the other side, where the cave-in occurred, they did not apparently know what to do, but the proper safeguard there and on the other side as well, was adequate timbering. The timbering that was done in these portions of that subway was manifestly designed mainly with the view to holding up the roof. For holding back the rock at the sides there was neither timber enough nor was it properly placed — the imperfection of bracing being more important than the deficiency of quantity. A mining engineer often accidentally shoots out a portion of his timber or experiences a run; but when either of those things happens he does not lose

a whole stroke and let the upper floor come tumbling down upon him. If any blame is to be fixed for the two cave-ins, the *Journal* is of the question that it should be placed on the heads of the Public Service Commission for not obtaining the assistance of some mining engineers when the subway work was begun. The engineers in actual charge of the work found themselves up against problems for which they had had no previous experience and simply did not know how to meet them." But it appeared this morning that Mr. Craven had had a good deal of mining experience, which, however, was not used, by his not going on the ground and understanding the situation.

Testimony of Mr. STEPHEN CARONSKI; examination by Mr. Frank B. Moss. (Witness is sworn.)

Q. What is your position? A. Assistant engineer.

Q. And what relation did you have to the section that caved in at Broadway and the section that caved in at Seventh avenue? A. I was in charge of the section on Seventh avenue.

Q. How soon were you upon the scene of the accident after it happened? A. About one-half — I should say three-quarters of an hour.

Senator Towner.— And what time of day did it happen? A. Shortly after eight o'clock.

Q. (By Mr. Moss.) Mr. Caronski, I want to ask you about an accident that happened before on that section — I think it was the 15th of June, or very close to that?

Senator Towner.— 1915?

Mr. Moss.— Yes, 1915.

Q. (By Mr. Moss.) Describe it, please.

A. Well, I was going up to the house and somebody told me that they had shot some posts out, so that I went down there immediately and got down in the timbering. I walked out on one of the beams, where I could get a good view of the trouble, and as I could see it there had been a blast where the rock had been blown out and the tower supporting the big I-beam had been crushed.

Q. Well, then, there was a tower right there? A. Oh, yes.

Q. Did this blast come from the ground or from the front? A. From the front — from the north to the south. You see, we were working north.

Q. Well, this tower was something in between the bents, wasn't it? A. Oh, that tower is used to support, it runs at the heading.

Q. But it was not a bent, there was something in between? A. Oh, yes; that's moved along.

Q. Is that a solid construction, rather heavy? A. Yes, sir.

Q. And that got the force of the blast? A. Yes, sir; it got most of the blast and several of the posts beyond it were knocked out.

Q. But there was no impulse of any consequence that went beyond the tower, was there? A. Well, the posts behind it were knocked out; I don't remember offhand, but several of the posts were knocked out.

Q. Well, was there an entire bent knocked out behind the tower, so the tower really got burnt out? A. Well, it got its share.

Q. And did you see the marks of the rocks that had struck it? A. Well, I was up above, looking down, and I could see this — it was splintered.

Senator Towner.— The tower is a four-post affair, thoroughly braced? A. Yes, sir.

Q. (By Mr. Moss.) Were you called as a witness in the coroner's inquest? A. Yes, sir.

Q. All of the engineers who had to do with the subway at that point were called, weren't they — Public Service engineers? A. Yes, I believe so.

Q. Did you express an opinion as to the cause of the run at Seventh avenue? A. No.

Q. Did you not? A. No.

Q. You were not asked in the coroner's inquest to express an opinion, were you? A. No, sir.

Q. Had you expressed an opinion before the coroner's inquest occurred? A. Why, I think that Mr. Follette asked that question.

Q. He had asked you your opinion, but what opinion did you give him before that? A. I told him that I believed the blast had wrecked the timber for a certain area around the heading and that the track breaking on it had caused a sagging of the track, which had snapped the rest of the posts down, but that there had been — but that the run, as I remembered it, occurred in such a way that some posts lay one way and others lay another. They did not all lay in one direction.

Q. Did you have the supervision of these inspectors? A. Yes, sir.

Q. You have heard the testimony of the inspectors, have you? A. Yes, sir.

Q. Is there any point in their testimony which, in your opinion, is not true? A. Well, in my estimation, it isn't entirely accurate to a slight extent; that's in connection with the wedges. Some timber foremen consider it best to tack down the wedge up under the post — the timbers that carry the street — where the greatest vibration is, where an impact comes. Others do not. Others fear, and it is very often the case, that when they nail the wedge it comes to a feather edge and splits the wedge, and the pieces are more apt to fall apart. They don't drive so tightly, there being a smaller area for a hammer to strike them. But, as far as the timbering in this wedge being lost, I think that no man who has ever been on subway work or been on any work connected with wedge work, can say that he never saw any wedge loose anywhere. They work out all the time, and there must be systematic inspection on the part of the timbermen, who go through and tighten them up.

Senator Towner.— By "systematic" you mean constant?

A. Yes, sir — constant. I should say that men go through that timbering every other day. These timber men can touch a post and tell whether it is properly supported by wedges. If it vibrates at all, it is a safe bet that the wedges are loose.

Q. (By Mr. Moss.) Did you hear the testimony of Mr. Parsons? A. Yes, sir.

Q. Did you agree with his testimony? A. In what respect?

Q. As given before the coroner? A. Well, I don't remember it in detail.

Q. Do you remember any point where you disagree with him? A. I do not.

Q. He said that cross-bracing would include the structure. A. I don't agree with him.

Q. Well, cross-bracing — the absence of cross-bracing, is something that you didn't object to, isn't it? A. I think it is a bad thing.

Q. But you did not object to cross-bracing? A. I couldn't if the mayor's committee ordered it in.

Q. While the job was progressing, you didn't object to it, did you? A. We never used them on that.

Q. You never objected to them? A. Oh, no.

Q. And you objected to the testimony of the engineers, who insisted upon it — their testimony was inclined to be critical of the system in that particular, wasn't it? A. Yes, sir.

Q. And that was the system that you had allowed to be used? A. That is the general system.

Q. I say that is the system you had allowed to be used? A. Yes, sir.

Q. And in that situation you were somewhat on the defensive? A. Yes, sir.

Q. Now, what was done by the Public Service Commission in the way of having a hearing, the taking of statements carefully to determine whether any one of their own force had been negligent in his duty? A. I don't know of any taking of testimony by the Public Service Commission.

Q. Did the chief engineer do anything? A. Not to my knowledge.

Q. Are you aware of any investigation which was made outside of the coroner's inquest to assemble in proper form the statements of all the people that knew anything on that subject? A. Well, I believe that all the engineers and commissioners and the gentlemen that have gone over this matter drew their conclusions —

Q. But they took no statements of any of the inspectors as to what they had seen, what they had done, or what they had not

done? A. I am sure that Mr. Veach questioned all the inspectors, as I did myself.

Q. Did you question any of these inspectors that have testified to-day? A. I asked them if they knew of anything being out of place, of how much they could tell me with regard to how much powder had been used, or anything like that — if they had heard of any irregularities in the use of powder.

Q. Do any of these inspectors know anything about powder and blasting? A. These men that were here to-day?

Q. Yes. A. I should say so. I don't know how much, though.

Q. What did you expect them to do? A. Well, I think that they can learn.

Q. Well, were they there to learn? A. They were not there to know blasting.

Q. Well, who did you have that does know blasting? A. The Public Service Commission has supervised the blasting.

Q. But does the Public Service Commission do anything to determine whether blasting is proper or not? A. Well, we have to judge the same as anybody else. The man who does the blasting does not always know just the amount of powder to use.

Q. Do you do anything as a Public Service Commissioner to determine the safety of the blasting? A. Yes, sir.

Q. What do they do? A. Go down and watch the blasts when they are set off.

Q. Do you know anything about blasting? A. Oh, no.

Q. Do you take it in as you happen to meet it? Have you got any man that understands blasting? A. No, I have no man that has ever had a blasting foreman's license.

Q. Do you know whether or not it is practical to cover these blasts in the subway? A. I should say that it was not.

Q. Have you an opinion as to whether it is good policy to have these heavy blasts going off in the subway uncovered? A. I think that it is good policy to cover them to a certain extent, which, in the judgment of the blasting foreman, is safe, and which is known to have been safe by its results.

Q. What does the blasting foreman get? A. I think he gets $5 a day.

Q. What training has he? A. I don't know.

Q. He is not an experienced man? What examination does he pass? A. Why, I believe he has to pass an examination before the fire department to get his license.

Q. Now, this blasting may affect the structure which you have to watch, may affect the lives of the men that you control, may bring about all sorts of conditions of a serious nature? A. Yes.

Q. What do you do as a Public Service Commissioner to have any knowledge whatever or control of this matter of blasting? A. I don't quite understand your question.

Q. What do you do with reference to blasting other than occasionally looking after it?

Q. (By Senator Towner.) He means do you supervise it? A. We don't supervise everything.

Q. Do you have any control over it? A. If the blasting is too strong, we warn them.

Q. I mean, after the blast is shot off? A. We wouldn't tell a man how many sticks of powder to use, or anything like that.

Q. Well, that's what I mean.

Q. (By Mr. Moss.) You haven't got anybody that would assume to say that a man was doing blasting in a dangerous way? A. Well, we would have some idea if he put too much in.

Q. Well, anybody knows when a blast sounds too loud. A. That's a wrong idea. When the blast sounds very loud, it is often an extremely light blast.

Q. Well, it shoots out too hard? A. Some of the blasts which are the heaviest go off with a slight rumble.

Q. What is it that you notice, then? A. What do I do?

Q. Yes, what do you notice? A. The way the rock comes down from the heading. If the quantity of powder is too large and the holes too close to the face of the rock, meaning that the amount of powder is greater than required to just break that rock, the rock will fly. Naturally, there is a certain force required to break this rock, and there is a certain amount of energy in dynamite — the difference between those two would be the propelling effect of the powder.

Q. Well, now, you do know something about blasting, and I am glad we got that on the record. Now, here's a blast that occurred in September last, which knocked down your structure and which killed some people; have you anything — have you done anything since that time to supervise blasting? A. No more than before.

Q. Not a thing more? A. We couldn't do anything more than we did before.

Q. You couldn't employ anybody that understood anything about it? A. We have the fire department that inspects this work.

Q. You depend upon the fire department? A. Yes, sir.

Q. Well, did you notice that the coroner's jury censured the fire department very severely for its lack of performance of duty in this case? What did you do about that? A. I did the same that I ever did before.

Q. What did your department do with the fire department over that question? A. Nothing whatever.

Q. Did you ask the Commissioner what he had done in reference to that kind suggestion of the coroner's jury? A. I had nothing to do with the commission.

Q. Do you know of anything that was done by your superiors with reference to that? A. No, sir.

Q. Not a thing? A. No, sir.

Q. I should think that that was sufficient warning to the contractors? A. That didn't refer to me.

Q. But you are to watch the contractors, aren't you? A. I do. That's what I am there for.

Q. Well, have you people really done anything more than to let the contractors go along and do as they did before without checking them up? A. There is a great deal more than that.

Q. Have you really seriously interfered with any contractor in any part of the subway? Do you recall? A. Oh, I stop them every once in a while. Not to any great extent, however, for I don't know that I have found anything of great importance.

Q. Aren't you inclined as a body to think that the engineers of the contractors are pretty good engineers — they are, as a rule, aren't they? A. As a rule they are; yes, sir.

Q. And they have pretty good engineering ability, don't they? A. Generally.

Q. And don't you lean back on that? A. No, sir.

Q. Well, what have you interfered with of any consequence in the last — we will say since this new subway was started. I am not speaking of you alone, but of anybody that you know of? A. Well, I found some bracing missing.

Q. How many? A. Well, I couldn't say offhand how many.

Q. Well, about how many? A. Three or four.

Q. How much did it cost to put them in? A. I don't know.

Q. Did you find any fault in the plan? A. No.

Q. You accepted the plan because you thought the engineers wouldn't have advised it if it wasn't all right? A. Because I knew it is all right.

Q. Did you ever inquire how far the engineers who advised that United States Realty plan intended that the temporary work should overspread the permanent work? A. No, sir.

Q. Did you ever think that they intended that it should reach the distance from the permanent work that it did on Seventh avenue? A. I couldn't say.

Q. Why did you permit such a long strip of faulty work? A. Because I deemed it to be safe.

Q. Have you permitted such a long strip as that since? A. There hasn't been such a distance left. The work has advanced to such an extent that it is impossible to get such stretches.

Q. Well, do you, in your sound judgment, entirely reject the conclusions reached by the mayor's committee of thirteen engineers? A. They made several statements.

Q. I am speaking about their criticisms of the system of substructuring. Do you reject entirely their criticisms? A. I think so; yes.

Q. And do you reject the criticisms of the government engineers who came here and examined from the Department of Mines? A. Yes.

Q. You reject all the criticisms of the engineers whose opinions occurred in the Mining Journal and in the Engineering Journal? A. I didn't read them.

Q. Well, their criticisms was that of the mayor's engineers. Twelve of the mayor's engineers are in the city service now, aren't they? A. Yes, sir.

Q. Did the chief engineer of the Public Service Commission ever question you? A. No, sir. I have never spoken to the chief engineer; we do not come in contact with the chief engineer.

Q. You don't know of any inquiry by the chief engineer that would result in his getting first-hand the knowledge of men like yourself or the opinions of men like yourself? A. Not at all.

Q. Will you say the same for Mr. Meyers? A. No. sir.

Q. You have talked with Mr. Meyers? A. Oh, yes.

Q. Would you say the same for Mr. Ridgeway? A. No, sir.

Q. Have you consulted with Mr. Ridgeway? A. I often speak with Mr. Ridgeway.

Q. Well, you Public Service engineers, practically together, took a position before the coroner's jury controverting the criticisms that were passed upon the structure, didn't you? A. Yes, sir.

Q. You took a defensive position there? A. Yes, sir.

Q. You allied yourselves with the contractors' engineers, didn't you? I mean, you took a similar position? A. Certainly.

Mr. Moss.— I think that is all, Mr. Chairman.

Senator Thompson.— The other witnesses may consider themselves discharged. We will take a recess until to-morrow morning at eleven o'clock. (Adjournment.)

MAY 3, 1916

HELD IN ROOM 526, MUNICIPAL BUILDING, NEW YORK CITY.

MORNING SESSION.

The proceeding was adjourned from Room 507 to Room 526.

Mr. Moss.— Mr. Chairman, to finish up the testimony of the last two days, upon this Seventh avenue accident, I want to ask for ten minutes time to read into the record some matters I didn't have time to put in yesterday.

The engineering journal from which I read yesterday was the Mining and Engineering Journal. I want to quote from an article appearing in the Engineering News, September 30th, 1915. I am informed that both of these papers are recognized as authorities among the engineers. I am quoting now:

> The weak-kneed make-up of the post system is the striking feature of the timbering. Drawn in true proportion it is an assemblage that the structural sense hesitates to accept. Instability of the post as a whole and doubtful stability of the I-beam forming the middle section are inherent in the assemblage. In the absence of longitudinal bracing in the structure, nothing to hold the posts from buckling except the spreading timbers between the I-beam webs, a moderate disturbance of the middle of the post system would be able to bring down a whole forest of these posts.

And I thought, your Honor, there is such a pretty little picture there that it is a pity we never had photographs of this made. I will furnish a copy of the cut which is included in this statement to be put into the record.

Quoting further:

> The south end of this section is in sand for the full depth where the north half is in all-rock schist; the same working system is employed in both parts, with only minor differences.

> The wreck showed the roadway planking lying in fairly regular arrangement on top of the debris in the cut. It seems to have fallen straight down. The supporting timbers and I-beams were not so regular in position. Such of them as could be identified as to original location indicated a movement south. The four or five beds of permanent steel at the south end of the collopse were crowded together and leading south.

I want to add my own comment upon that: The testimony of some of the Public Service engineers showed a theory that falling track dragged down these bents. But if the roadway fell straight down into the subway and was found by observers lying on the bottom of the tunnel just below the place where it had been above, and if notwithstanding that the decking occupied its original position, the posts underneath had all been moved southward, and if in addition to that fact permanent steel structure for bents were crowded together, it seems to indicate that the force which was moving those posts southward was a force at work underneath the decking and not above it. This article again says:

> There is no longitudinal diagonal bracing in either upper or lower tier of posts.

That is as much as I will quote from that article.

I quote from the witness Conti before the coroner:

The witness has been testifying that he moved posts.

> Q. Did you ever take out any other timbers? A. The braces between the posts.
>
> Q. The braces between the posts? A. Yes, sir.
>
> Q. Did you leave them out? A. Sure. We cannot put them in because we have one post to the east and one post to the west, and we cannot put them in.
>
> Q. So that after you took out those spreaders between the posts you left them out, did you? A. Yes, sir.
>
> Q. How far up on the work had you taken out those spreaders that ran north and south? A. About 125 or 150 feet from the north to the south.

Q. That is, from the rock heading south? A. Yes, sir.

Q. Now, from the south end of that which fell, were the spreaders out all the way out to that point on Twenty-fourth street? A. It was.

Q. When you took those spreaders out that I am pointing to between the bents, where did you start taking them out? A. Between Twenty-third and Twenty-fourth streets.

Q. As far down as where the end of the cave-in was? A. Yes.

Q. That is where you started in A. From down south I went 125 to 150 feet. I left it in good shape. I didn't take out any posts or spreaders there.

Q. Below that were the spreaders all out? A. They were all out.

Q. How were they in the middle posts? A. Some were in and some were out.

Q. How long before the cave-in did you take those spreaders out? A. A week.

Q. A week before? A. Yes, sir.

Q. And they were never put back? A. No.

Q. Did you take out those spreaders between the I-beams too? A. Yes.

Then he speaks of some braces that were too short; he left them lying on the ground. He said, "If the boss gave me order sto put them in I would put them in."

Q. Did you talk to any other timberman from the time that you went to work up to the time of this cave-in about this kind of bracing? A. I talked plenty of times to my men.

Q. Who were they? A. The men who worked under me.

Q. What did you say to them? A. I said, "I don't like that kind of work."

Now, I quote from Mr. Davies, who was the one outside expert that was called in and questioned by Judge Parker at the request of the United States Realty Improvement Company. And his whole theory as stated to the jury appears as found on page 1165:

Q. What, in your opinion, was the cause of the accident? A. I cannot see that there was any possible explanation but one, and that is that the original cause of the accident was a blast set off in the northeast corner of the cavity; that is, a little south of Twenty-fifth street and on the east side of the street, which pushed over, pushing down the entire supporting members, carrying all the superstructure of the tracks and street surface in, pushing it down. It must have received a tremendous blow or a tremendous shock, because the effect of that push or blow had extended all the way back to the south of Twenty-fourth street, and it even pushed over four bents of steel erection which had been put in there as a part of the permanent construction; in turn the blow or push which had been received by the under-supporting members, the lower supporting members, and allowing the settlement, or a failure of the surface had in turn allowed the drop of the trolley car tracks among other things. The trolley rails, having held, gave practically another pull northwards, pulling northwords the upper portion of the structure and thereby imparting an additional kick to the lower portion. But the primary cause unquestionably, in my mind, was the explosion or blast which had been set off in that corner, the northeast corner of the cavity.

Now, I comment upon that for the sake of the record. What might have been said before this coroner's jury by way of summarization — the testimony of this expert Davies indicated that there was a jolting or pushing force operating against the lower part of the substructure and moving with such tremendous power as to knock down four bents of steel. Then he accounts, or brings in, the action of the track simply as something that dropped down into the excavation after the supports had fallen and he says the impulse that was given by the track was a northward impulse, not a southward impulse, but a northward impulse. And he evidently thinks that that was a secondary impulse furnishing a sort of backward kick toward the unstable element, the I-beam in the middle of the post.

Testimony of HENRY B. SEAMAN.

Mr. Seaman is recalled as a witness.

Mr. Moss.— Mr. Seaman, will you take the stand?

Mr. Seaman takes the stand.

Senator Thompson.— Mr. Seaman, you have been sworn?

Mr. Seaman.— Yes.

Mr. Moss.— Mr. Chairman, I am about to introduce what seems to me to be a very important line of testimony, and I want in a few words to explain. There are a great many subjects which will be brought to your attention before the 1st of July, but I suppose the subway contracts will always be the most interesting, perhaps they will always be the most fertile field for investigation. They are a fertile field. You can hardly turn in any direction without finding something that should be inquired into. I think when the first day of July comes we will find there is a great deal that ought to be done that has not been done.

Senator Thompson.— I hope we will not be criticised for it.

Mr. Moss.— I have noticed some criticism of the work of this Committee with reference to the subway situation, some criticisms evidently proceeding upon the idea that we have not a definite policy or a constructive purpose. But that is because the testimony has been spread over such a long period, and has had to be taken up at different times, and the relation of the different parts is not understood. When the first day of July has arrived, Mr. Chairman, I think we shall have upon this record material for a systematic report, a report of constructive quality, which will meet every reasonable requirement that anybody would have a right to apply to it. I don't think we will be behind any committee that has sat upon an important subject when the work comes to be tested by the requirements of permanent value.

The discussion of the subway contracts comes naturally through complaints that have reached you and, since I have had the honor of assisting you, that have reached me. These complaints and the duty of the Committee upon them have arranged themselves in my mind a very simple way; I see them in a very simple system.

The first question, it seems to me, is, are these contracts bad for the City of New York? I am speaking now of the subway contracts which were put into force in 1913. Are they bad? And I hope this Committee will be able to give an answer to that question, based solidly upon enduring testimony.

If they are bad, were they put through by any improper or corrupt influences?

Second, if they were bad contracts, have they been attended by improper or fraudulent conduct? That is, has there been an atmosphere of wrongdoing about them which has continued since they were put over?

The complaints that have come to us in the matters that we have investigated seem to arrange themselves into those three questions, which I put to you in the form of questions because your function is a judiciary function, and certainly there has been no prejudgment.

Senator Thompson.— I don't quite regard this Committee as a judicial committee.

Mr. Moss.— Well, in a sense perhaps I do not state it all. But I am sure that the Committee has not taken up the matters with a settled conviction that would prevent the consideration of any evidence. That is all I mean.

Senator Thompson.— Of course, I am entirely in accord with the idea that the record should show the facts, because we have got to base it on the record. It might be some day someone would have to take it up where we left off. We really have got to have it correct.

However, I would feel it a waste of time of the Committee to attempt to investigate facts that we already know. We will put them in the record anyway, otherwise. The object of the investigation is to bring out something that we didn't know before. That is what our purpose is. But, of course, we have got to have these facts that you are putting in — I realize that is true. But, Mr. Moss, so far as the right system is concerned, the work of the Committee will answer that. That is the best way I can answer it. I am sure that the members of this Committee and the newspapers have worked that out.

Mr. Moss.— I am in accord with that which you have suggested — that is, there may come those after this Committee is out of office who will find something to do. And my desire is that this record shall contain the facts or suggest the facts, the facts that are known, or at least suggest them. So that those who may be forced to find a way out of a bad situation may have in the record a mine of information and some illumination to undertake the work, if it be so determined, of delivering the city from bad contracts.

Now, this testimony this morning, which I begin with Mr. Seaman, will relate to the very first contracts that were let out and undertaken in the construction of the new subway system. The officials of the City of New York, who had been elected upon a certain platform, a platform adopted in line with the vote of the people, proceeded at first apparently upon the idea of getting the work and building a subway by the city. And in October, 1910 — October 20th, I think I am correct, 1910 — advertisements were published, asking for bids in various ways upon the route that had been laid out, I think generally called the Tri-Borough Route.

On the 26th of October a number of bids came in. These bids, I am informed, were high. I am informed that contractors did not take the city seriously at that time, because there was a change of engineers and circumstances generally surrounding the situation made them feel that it was not a serious matter, and that those bids would hardly be worth making. But they did make them and they made them high. The most prominent bids that were received were the bids of the Bradley Contracting Company, a company which has received thirty or forty million dollars worth of bids — or worth of contracts. Then the matter rested there for a long time. The different forces were at work, some forces for the city construction, some for the Interborough, and perhaps at that time the B. R. T. had not come in actively, but there were those who were friendly to the B. R. T. that were watching its interests. And there was a clashing of purposes and a clashing of movements between the different forces that became interested in this subway situation which was opening out.

The advertising for these contracts was in September. The receipt of the bids was October 26th. These bids came in on the

Lexington avenue section; of course in my statement I am omitting references to the Fourth avenue and Brooklyn, which had been begun before. Now, these bids which came in in October, 1910, were not only unusually high because of a circumstance that I referred to, but also because materials were high, and also because of the existence of the Labor Law then supposed to be controlling — that is, the Workmen's Compensation Law.

The contracts were awarded in July, 1911, after a very hard conflict in the Board of Estimate and in the Public Service Commission over the situation produced by the conflicting efforts of the B. R. T. and the Interborough. And in one of those historic moments when some people were charged with flopping and everything was mixed up, the point was reached where it was determined by those who had control to force the fighting and begin operations in Manhattan on the Tri-Borough system. So these contracts which had been laying upon the bids which had been received were awarded. They were awarded to the same contractors who bid for them at the same figures that had been bid back in October, 1910. But price of materials had gone down; the Labor Law had been declared unconstitutional, and changes had been made in come of the plans which made the requirements of the contractors very much less expensive to comply with. So it was that A Route, No. 5, No. 8, was let to the Bradley Contracting Company for $3,369,484.20. Section No. 10 to the same company for $3,253,072.80. No. 11 to the same company for $3,132,195.05. To the same company No. 13 for $4,071,416.50, which they afterwards assigned to MacMullen, Snare and Trieste. Now, there was another section, No. 12, which was awarded to the Carson & Daniels Company in September of that year at $2,825,740.74. That had been awarded tentatively to the Bradley Company, but as the Bradley Company was the only bidder it had to be relet. I am in error about section No. 11; that was relet to Patrick MacGovern & Company for $1,961,997. That was readvertised because the Bradleys, in October, 1910, were the only bidders, and to comply with the law there had to be competition.

Now, for the purposes of Mr. Seaman's testimony, at least in part, the result of that contract in this series of contracts: That

was re-advertised and re-let, and furnishes a criterion. We will be able to show that the result upon section 9 of the re-advertising was that the city made a saving of $328,060.85. And the total of that contract was less than two million. Now, the inference which I shall ask you to draw and which I think Mr. Seaman's testimony will help to establish is, that if all of those Bradley contracts had been re-advertised and re-let the same proportion of saving would have occurred. And stupendous as it may seem, the saving on those few contracts upon that basis would have amounted to several million dollars and that would have applied equally to section No. 12, the Oscar Daniels Company, and to section No. 15, a contract which was originally Haggerty, Drummond & Company, and afterwards assigned to Rogers & Haggerty, Incorporated.

Then the question will arise: Why were not these contracts re-advertised? The question will arise: Who were the responsible persons at the time these contracts were not re-advertised? And naturally the question will come, too: What was the motive for the neglect of so patent a measure of business wisdom?

I believe the decision which showed the unconstitutionality of the Labor Law and determined it, was the case of Ives against the South Buffalo Railway Company, reported in the 201st New York Reports at page 171, which volume was published in 1911, and the imprint on the top of the page is March, 1911.

Q. (Mr. Moss.) Mr. Seaman, you are an engineer, are you? A. I am.

Q. And you were formerly chief engineer of the Public Service Commission? A. I was.

Q. How many years were you in that position? A. Three years.

Q. Your assistant was Alfred E. Craven, wasn't he? A. Alfred E. Craven; yes.

Q. And after you resigned Mr. Craven became the chief engineer and has been such ever since? A. He was acting chief engineer for a year and then was appointed chief engineer, as I recollect it.

Q. To some extent, Mr. Seaman has already told us some of the circumstances of his resignation, but perhaps not fully. What

engineering experience did you have beside that which you gained in the Public Service Commission? A. I had been bridge engineer of the Erie Railroad system; I had been construction engineer on the New York, New Haven & Hartford Railroad; I had been contractors' engineer on the first subway extension of the old subway, which was first to start and first to complete; I had been consulting engineer in the Department of Bridges, and had charge of the operation of the Brooklyn Bridge, which had the most dense traffic for a single track in the world. I think that covers the general experience.

Q. And you had practiced your profession as a consulting engineer since you left the service of the Public Service Commission? A. Yes.

Q. You are well known in the engineering profession? A. I think so.

Q. And I suppose you have membership in some of the engineering associations, and are a member of good standing? A. I am.

Q. I want to ask you what you know about the circumstances of advertising for the Lexington avenue subway as it was advertised in 1910. A. Well, the preparations for advertising the Lexington avenue subway I believe were all made after I became inactive. I left for Europe some time in July or August, and didn't take active charge again before my resignation.

Q. Can you tell us under whose oversight the preparations were made? A. They were made under Mr. Craven's oversight; he was acting chief engineer in my absence.

Q. Yes. Where were you when the bids were received? A. I was in New York City.

Q. Do you know anything of the circumstances of those bids? A. Merely as appeared in the public papers — press.

Q. Were you then chief engineer? A. I was not.

Q. How many contracts were advertised at that time, about? A. I think the entire system was advertised, if I recollect right.

Q. And what, in your opinion, was the wisdom or unwisdom of advertising so many at once? A. Well, from the viewpoint of economy of bids it was probably unwise to advertise so many at once. There may have been a purpose in it to get confirmation

of the estimates; the estimates which I made and which I repeatedly asserted were ample, and had a provision of 10 per cent for contingencies, were claimed by some to be much too small. I think some —

Q. Wait a minute. Had you made estimates of the probable cost of this work? A. I had.

Q. And to whom had you given those estimates? A. They were in my department. I don't remember as to whether they had been formally transmitted, but they were transmitted in part from time to time to the commission.

Q. Yes. Well, they were either in the hands of the commission or in your department where your successor had access to them as part of the records? A. Yes, yes.

Q. And who was it that said they thought your estimates were too low? A. Why, Mr. Bassett generally claimed he feared my estimates were too low.

Q. He was a commissioner? A. He was a commissioner.

Q. Did any other commissioner make a similar claim? A. I don't remember that any other commissioner made a similar claim.

Q. Now, you say you thought that the advertising of so many contracts was designed to produce some result. Explain that. A. Why, inasmuch as there was this difference of opinion as to the probable cost, and they wanted to know before they began work how much money they would have to have, they naturally wanted a confirmation or a refutation of the estimate. That might have been the reason why all were advertised at once.

Q. Well, the very tendency of advertising so many would be to bring in high bids? A. Well, that is true.

Q. Did you say that that would be the result to anyone? A. I don't remember that the matter was discussed. My recollection is that the entire tri-borough system was divided into two or three groups of contracts, depending upon the probable time consumed in their completion.

Q. Yes. A. And it was then intended to let the contracts first which took the longest to complete and so forth, so they would approximately be finished about the same time. That I know had been under discussion.

Q. Yes. Did you make any recommendation on that line? A. I don't think I made a formal recommendation. We have records on that.

Q. Did you make any suggestion? A. Yes.

Q. What was that? A. I referred a suggestion to that effect.

Q. Yes. Were there any circumstances at that time tending to a high bid other than what you have mentioned? A. Well, I think what I have already mentioned perhaps tends to the high bid; the unfortunate circumstances existing between the commission and the chief engineer at the time.

Q. Yes. A. That generally threw an atmosphere of uncertainty over the entire work, and I don't think that people felt sure that the work would go ahead on that basis. And under those circumstances a contractor will not make close bids.

Q. Were materials high at that time? A. The cost of materials were lower later. I don't know that you can say they were specially high at that time.

Q. Well, they were higher than they were later? A. Yes, they were lower later.

Q. And was the effect of the Labor Law apparent in those bids? A. Undoubtedly, yes.

Q. Could you estimate a percentage that would result? A. I wouldn't want to estimate that, because I think that would differ in every contractor's mind. It is a matter of chance.

Q. Yes. About how much would you be willing to gamble on? That was an element, wasn't it? A. Yes.

Q. The liability of the contractor for his workmen, under that law? A. Yes.

Q. Though you were out of the department, you have kept track of the history of these contracts, haven't you, in a general way? A. In a general way.

Q. Have I stated in what I said before you upon the stand substantially the number and the general nature of these contracts? A. I think you did; I think you did.

Q. Have you examined the contract for section 9, the bids for section 9, the MacGovern section? A. I did.

Q. Did you examine those bids upon the question of the price of materials as between the original contract and the new contract?

A. I made an examination of those bids in order to ascertain the amount of saving by the second bidding.

Q. Who made the first bid? A. On section 9?

Q. Nine. A. The Bradley Contracting Company.

Q. The Bradley Company. They they were unopposed, weren't they? A. I believe they were the only bidders.

Q. Have you got the figures of what they bid originally, as in October, 1910? A. Their bid, October 27th, 1910, was $2,447,479.70.

Q. Now, the contract was actually let to MacGovern on February 13th, 1912; and the figure was $1,961,997. A. Yes.

Q. And right on those figures, did you figure out the difference? A. Well, those figures are not directly comparable because they are on different designs and the quantities vary. Some quantities in the first bidding are entirely omitted in the second. The only way that those figures can be properly compared is to find what quantities enter into both contracts. And in order to do that properly, in my judgment, you must take the quantities in the first contract which were bid upon, also in the second letting, and place opposite those quantities the two prices, the first prices and the second price. And the summation of these will give you a fair comparison of the difference.

Q. Yes. Then the comparison you made was a comparison of prices, upon the same articles? A. Yes, that is it.

Q. Upon the total computation, what did you find to be the advantage to the city in the re-letting of that contract?

(Mr. Moss hands papers to witness.)

A. The saving is $328,060.85.

Q. Now, I wish you would state for the record how you arrived at that amount. Let's get it right into the record. Take each item, and state the method.

(Few moments' recess.)

Mr. Seaman, you said there were some difference as between the contract as it was let to MacGovern and the contract as it was bid on by Bradley originally. Had there been some change in the plan? A. Yes, there were new plans made, I believe.

Q. Well, did the new plan contain any reductions in the size of the tunnel? A. I believe it did.

Q. Now, let's get that clear. Between October, when these bids came in, and July, when the contracts were signed, the size of the tunnel was changed; is that so? A. Between the time that the bids came in, and the bid for section 9 was re-advertised, which was December 5th, 1911, some changes were made, and probably the change had been decided on long before that time.

Q. Would any of those changes affect the prices of the contracts? A. The changes, inasmuch as —

Q. Pardon me, pardon me — would any of those changes affect the contracts that were not re-advertised, affect the price of the contracts that were not re-advertised? A. Those changes would not materially affect the unit prices, they would incline to increase them; because the quantity being smaller, with a fixed overhead charge, they would incline to increase the unit price.

Q. Now, before you go into the elements which make up that three hundred odd thousand dollars, I will ask you if you made a computation upon the contracts that were not re-advertised by percentage which would show the probable loss to the state for not re-advertising all of those contracts, based upon the MacGovern computation? A. Yes. I have a number of contracts which I believe were not re-advertised, and putting the same percentage of saving on them as was shown on this section 9, which is about 14 per cent, makes a saving of $3,374,875 on these contracts, which I have enumerated on these contracts of sections 6, 8, 10, 11, 12, 13 and 15.

Q. What was the total of those contracts? A. The total of those contracts was $24,106,249.

Q. Were they all on Lexington avenue? A. They were all on the Lexington avenue route.

Q. Well now, your computation relates only to the price of materials, does it — the difference in price of materials? A. The difference in prices bid, and that is affected by the prices of materials or labor conditions or anything else which would go into the cost of construction.

Q. Well, now, having those totals, please proceed in more detail. Give the operation that you followed on this contract

which was let to Patrick MacGovern. A. I found that among the items of the original letting were several entirely omitted in the re-letting: 18,000 cubic yards of earth, excavation below mean high water, was one; 525 cubic yards of terra-cotta masonry was another; 4,400 odd linear feet of 2-inch fiber conduit was another; 12 tons of cast iron sewer pipe was another; 1,250 lineal feet of 3-feet 6-inches by 2-feet 4-inch sewers was another.

To the remaining items of that first letting I applied the prices at the first bidding and the second bidding, and took the sum of those two results, and from that drew my comparison of saving in percentage.

Q. Well, can't you give us the various items from the list which you gave me? A. Yes, I can. The first item is 101,100 cubic yards of earth excavation above mean high water. The first bid and the second bid were alike on that item, $3.50, which resulted in $353,850. There was no saving or loss on that item.

The next item of the first letting which was bid also upon in the second letting was rock excavation, the first letting at 48,400 cubic yards and the bid was $5; at the second letting it was reduced to $4.65, and effected a saving of $16,940.

The next item, of 500 cubic yards of rock excavation for sewers: the first bid was $6, the second bid was $10, and effected an increase of $2,000.

The next item was 350 front feet of underpinning for buildings up to seven stories in height; the first bid was $150 per lineal foot, the second bid was $82 per lineal foot, and effected a saving of $23,800.

The next item was 60,900 cubic yards of tunnel excavation; the first bid was $9, the second bid was $8.25, and effected a saving of $45,675.

The next item was 36,360 cubic yards of concrete masonry; the first bid was $10, the second bid was $9, the saving was $36,360.

The next item was 900 cubic yards of protective concrete masonry; the first bid was $8, the second bid was $9, the increase of the second bid was $900.

The next item was 4,650 cubic yards of "rubber" masonry. The first bid was $8, the second bid was $7; effected a saving of $4,650.

The next item was 2,740 cubic yards of brick masonry; the price of the first and second bids were the same, with no saving and no loss.

The next item which appears in both biddings is 2,000 barrels of Portland cement. The first bid was $4.50 a barrel; the second bid was $4 a barrel; this effected a saving of $1,000.

The next item is 1,300 cubic yards of broken stone; the first bid was $2.50, the second bid was $2.75; this showed a loss of $325.

The next item was 4,860 square yards of waterproofing, one-ply; the first bid was $0.75, the second bid was $0.50, and effected a saving of $1,215.

The next item was 100 square yards of water proofing, two-ply; the first bid was $1, the second bid was $0.60, and effected a saving of $0.40.

The next item was 7,950 square yards of water-proofing, three-ply; the first bid was $1.50, the second bid was $0.85, and effected a saving of $5,167.50.

The next item was 100 square yards of water proofing, four-ply; the first bid was $1.75, the second bid was $1.50; effected a saving of $25.

The next item was 100 square yards of water-proofing, five-ply; there was no change in the price, which was $2 in each case; there was no saving or loss.

The next item was 100 square yards of water-proofing, six-ply; the first bid was $2.50; the second bid was $3, which effected a loss in bid of $50.

The next item, of 824 cubic yards of brick in asphalt; the first bid was $30 and the next bid was $25, effected a saving of $4,130.

The next item, 100 lineal feet of 12-inch vitrified pipe; the first bid was $1.75, the second bid was $1.50, and effected a saving of $25.

The next item, of 100 lineal feet of 10-inch vitrified pipe; the first bid was $1.50, the second bid was $1.25; effecting a saving of $25.

The next item, of 6,490 lineal feet of8-inch vitrified pipe; the first bid was $1.25, the second bid was $1, and effected a saving of $1,622.50.

The next item was 200 lineal feet of 6-inch vitrified pipe; the first price was $1, the second price was $0.75; effected a saving of $50.

The next item was 100 lineal feet of 4-inch vitrified pipe; the first bid was $0.75, the second bid was $0.50, and effected a saving of $25.

The next item was 100 lineal feet of 6-inch cast iron pipe; the first bid was $1.50, the second bid was $1, and effected a saving of $50.

The next item, of 8,540 lineal feet of 4-inch cast iron pipe; the first bid was $1, the second bid was $0.90, and effected a saving of $854.

The next item was 491,400 duct feet of tunnel ducts; the first bid was $0.15, the second bid was $0.10, and effected a saving of $24,570.

The next item, of 994 tons of riveted steel; the first bid was $90, the second bid was $70, and effected a saving of $19,880.

The next item, of 695 tons of steel beams; the first bid was $80, the second bid was 62, and effected a saving of $12,510.

Q. (Mr. Moss.) Let me interrupt you there, Mr. Seaman. Did Bradley bid the second time? A. Bradley did not bid the second time.

The next item is 1,017 tons of steel rods and bars; the first bid was $65, the second bid was $45; effecting a saving of $20,340.

The next item was 52 tons of cast iron column; the first bid was $75, the second bid was $70, and effected a saving of $260.

The next item was 5 tons of iron castings; the first bid was $75, the second bid was $70, and effected a saving of $250.

The next item was 1,300 pounds of wire mesh; the first bid was $0.10, the second bid was $0.06, and effected a saving of $52.

The next item is 10,520 lineal feet of galvanized iron pipe; the first bid was $1.25, the second bid was $0.50, and effected a saving of $7,890.

The next item was 5,580 square feet of steel gratings; the first bid was $2.50, the second bid was $1.50, and effected a saving of $5,580.

The next item was 2,620 square feet of floor pins; the price on both lettings was $2, and there was no change.

The next item was 4,770 square yards of sidewalk; the first bid was $3, the second bid was $1.50, and effected a saving of over $7,000.

The next item was 15,760 square yards of temporary paving; the first bid was $3, the second bid was $1.50, and the saving was $23,640.

The next item was 14,000 lineal feet of three-quarter-inch wrought iron conduit; the first bid was $0.30, the second bid was $0.15, and effected a saving of $2,106.75.

The next item is 478 lineal feet of 1½-inch wrought iron conduit. The first bid was $0.45, the second bid was $0.20, and effected a saving of $119.50.

The next item is 256 lineal feet of wrought iron conduit — of 2-inch wrought iron conduit. The first fiid was $0.60, the second bid was $0.25, and effected a saving of $89.60.

The next item on which they had a re-letting was 612 lineal feet of cast iron outlet boxes. The first bid was $1, the second bid was $0.50; effecting a saving of $306.

The next item was 300 lineal feet of 6-inch cast iron pipe. The first letting, $2.50; the second letting was $1.50, showing a saving of $300.

The next item was 2,800 lineal feet of 15-inch sewer pipe; the first letting was $7, the next letting was $5, showing a saving of $2,800.

The next item was 530 lineal feet of 18-inch vitrified sewer pipe; the first letting was $7, the second letting was $6, and showed a saving of $530.

The next item on which there was re-bidding was 1,200 lineal feet of 6-foot circular sewer; the first price was $25, the second price was $20, showing a saving of $6,000.

The next item, of 240 lineal feet of 6-feet 6-inch circular sewer; the first bidding was $28, the second bidding was $25, showing a saving of $720.

The next item was 6,696 lineal feet of electric railroad supports; the first bidding was $18, the second bidding was $12, showing a saving of $37,176.

The next item was 100 lineal feet of 4-inch water pipe; the first letting was $1.25, the second letting was $0.75, showing a saving of $50.

The next item is 330 lineal feet of 6-inch water pipe; the first letting was $1.50, the second letting was $1.25, showing a saving of $82.50.

The next item is 1,050 lineal feet of 12-inch water pipe; the first letting was $2, the second letting was $1.50, showing a saving of $525.

The next item, of 100 lineal feet of 16-inch water pipe; the first price was $2.50, the second price was $3, showing an increase of $50.

The next item, of 100 lineal feet of 16inch water pipe; the bidding was $1, the second bidding was $0.75; showing a saving of $82.50.

The next item was 1,200 lineal feet of 6-inch gas pipe; the bid was $1.25 in each case; no change.

The next was 280 lineal feet of 8-inch gas pipe; first bid was $1.50, the next bid was $1.35, showing a saving of $42.00.

The next item was 290 lineal feet of 12-inch gas pipe; the first bidding was $2, the second bidding was $1.50, showing a saving of $145.

The next item is 530 lineal feet of 20-inch gas pipe; the first bidding was $2.50, the second bidding was $3, showing a loss of $265.

The next item was 30 tons of cast iron pipe; the bid in each case was $40; no change.

The next item was 8 tons of cast iron special; the bid in each case was $70; no change.

The next was 410 lineal feet of 8-inch air pipe; the bid in each case was $2; no change.

The next item, of 100 lineal feet of 8-inch air pipe, new; the bid in each case was $2; no change.

The next, and the last item, was 170,000 duct feet of street duct; the first bid was $0.25, the second was $0.15, and the saving was $17,000.

Making a total net saving of $328,060.85.

Q. (Mr. Moss.) This comparison you have made was done at the request of counsel for the Committee, was it? A. It was.

Q. Now, in your opinion, Mr. Seaman, could this re-letting process have been done on all these other sections that you have enumerated, which you said would have resulted in a total saving of $374,875 — could it have been done? A. I don't see a reason why it couldn't have been done, and if it had been done it would probably have effected the same saving.

Q. Yes. Have you known of any reason being assigned why it was not done? A. No, I do not.

Q. Never heard of any legal excuse — at any time? A. No, I have not been in touch with the situation since that time.

Q. Well, did you hear the statement made, or attributed, to any one of the Commissioners, that it was necessary to hurry? A. Well, there was the general situation there at that time — they were receiving bids from the B. R. T. and the Interborough, and I think it was in order, if possible, to force the situation; although I am not familiar enough to describe —

Q. Have you heard any contractors express the opinion that the original bids were not taken seriously by the trade? A. Yes, sir.

Q. Contractors have told you that? A. I have heard that; I can't say just how, but I have heard it on several occasions.

Q. Have you heard the general statement among contractors that the price of the original bids were high? A. Yes.

Q. You have. It is generally understood in the profession. A. I have heard it a number of times.

Q. Well, these contracts are practically finished now, aren't they? I find from the printed announcement of the Commission, dated March 1st, 1916, that contracts 9, 10, 11 and 12 are 100 per cent. completed, 8 is 96 per cent., 13 is 98½, 14 is 99 8-10, 15 is 98 8-10; so that all these contracts are substantially completed two years ahead of any time when the work can be put in use. I think that is all, Mr. Seaman.

(Mr. Seaman leaves the stand.)

Mr. McBean, I think I will ask you to come in after recess. The Public Service Commission have not yet sent over some papers that were sent for; there is some delay in getting them.

Senator Thompson.— While it wasn't this Committee that was responsible later, still it was the testimony, matters that came before the Committee, that originated the bill for arbitrary 80-cent gas in the city of Brooklyn, and it was introduced into the Senate as a bill which the Committee or the chairman drew, and it passed both houses, and I understand now it is referred to as a city bill. It is here before the mayor, and there is a hearing on it at 2:30 this afternoon, and I believe I shall go there and explain the reasons for the passage of that act; I may have to be over there a half hour or an hour. I would like to be here.

Mr. Moss.— I would like very much to have you here while this testimony is being given, and I don't want to inconvenience Mr. McBean any more. Let's take him in the morning.

Senator Thompson.— Well, I won't be over there over half an hour or three-quarters of an hour.

Mr. Moss.— Well, then, make it three o'clock.

Senator Thompson.— We won't waste a day. I would like to get the work along.

Mr. Moss.— Well, then, we will look for you, Mr. McBean, at three o'clock. I don't think that it is useful to split it up.

Senator Thompson.— Anything else you can think about?

Mr. Moss.— No.

Senator Thompson.— Well, then, we will suspend until three o'clock.

Recess until 3 P. M.

AFTERNOON SESSION.

Meeting called to order by Senator Thompson.

Testimony of ALFRED E. CRAVEN.

Mr. Moss.— Mr. Craven, I will ask you some questions before you go.

Mr. Craven takes the stand.

Q. (Mr. Moss.) Mr. Craven, we have been looking at the contracts that were let in July, 1911, on Lexington avenue. One of those contracts, No. 9, was re-advertised and let to Patrick MacGovern & Company — Lexington avenue from 67th to 79th streets. Why was that re-advertised? A. (Mr. Craven.) There was only one bid, and the Commission thought it would be better to re-advertise it.

Q. Why were not the others re-advertised? A. I don't think it was necessary that they re-advertise all of them.

Q. Did you talk with any of the Commissioners about that? A. I think probably that I made a report to them on those contracts.

Q. Well, did you consider with the Commission the question of whether they should be re-advertised or not? A. Only that and one or two others that I thought had better not be let at that time.

Q. Why did you think they'd better not be let? A. Well, there was the reason on that account because there was only one bid, and we thought that it would be better to get more bids on that contract.

Q. Yes. A. I don't recall just which other contract on Lexington avenue was re-advertised, but a large number of them were re-advertised, on the lower part of that work — of that route.

Q. Were the plans changed between the time of the original bids, received in October, 1910, and the time that the contracts were let, July, 1911 — any change in the plans. A. Not the Lexington avenue plans, excepting that No. 9, I think, was changed.

Q. In what way? A. Why, the original plot shows a large section, unusually high section, and it was decided by the Commission that they would reduce that section in size, and —

Q. The others had to be in the same proportion, didn't they — required the same line? A. They were reduced.

Q. They were all reduced? A. They were all reduced.

Q. Yes, but that made some change in figuring, didn't it? In figuring the change of the size of the tunnel, would make some changes in the figures, wouldn't it — estimates? A. Well, yes; it reduced the estimate — it reduced the cost of the work.

Q. It reduced the cost of the work? A. Yes.

Q. But it might change the unit cost, would it not? A. No, not materially.

Q. Don't you think when the work is larger the unit cost is apt to be smaller? A. Not materially; no, sir, not on those sections.

Senator Thompson.— That is all concrete.

A. It reduced the concrete somewhat.

Senator Thompson.— It is so with concrete — the larger the job the less the cost of unit of concrete? A. Not necessarily, no.

Senator Thompson.— Isn't it true, generally? A. Well, it might be on a very large amount of concrete.

Senator Thompson.— Well, the more concrete you are putting in the cheaper you can give it per yard? A. Well, my opinion —

Senator Thompson.— I am trying to find out just an answer to my question — that is, the more concrete that is put in at the given place the cheaper per yard you can put it in; isn't that true? Just an abstract question. A. That is a general proposition. It might be and it might not be.

Senator Thompson.— That is the way you answer it? A. That is the way I do.

Senator Thompson.— All right.

Mr. Craven.— That is, the contractor, in making up these bids, distributed overhead charges in the different units of the work.

Now, one contractor might contribute one part of the work, another contractor might contribute excavation, and, therefore, you have no fixed item.

Senator Thompson.— I don't care anything about the overhead charges; but the concrete — if you are going to put it in six inches thick you can put it in cheaper per yard than you can if you are going to make it one inch thick. A. You might.

Senator Thompson.— Can't you? It is a question of "can" or "can't," isn't it? A. It wouldn't alter the bid.

Senator Thompson.— It wouldn't alter the bid? A. It might be put in cheaper then.

Senator Thompson.— Well, it would be, wouldn't it? A. No.

Senator Thompson.— Always has been, hasn't it? A. No.

Senator Thompson.— Every contractor figures on it that way, don't they? A. No.

Mr. Moss.— Well, before these contracts were actually let, but after the time when the bids came in, or the estimates came in did you know that the decision was rendered by the Court of Appeals declaring that the Workmen's Compensation Law was unconstitutional? A. I have no recollection of that.

Q. (Mr. Moss.) Wasn't that taken into consideration? A. Not in those contracts, I don't think.

Q. Don't you think that contractors made some allowance in the bids for the operation of the Workmen's Compensation Law, when they put in their bids in 1910? A. The Workmen's Law didn't apply to those contracts.

Q. Applied to compensation in certain dangerous employments, didn't it? A. Well, I can't go into the details of that without refreshing my memory on the matter.

Q. Didn't you learn that contractors estimated the effect of that law in 1910, some at ten per cent., some at fifteen, and some at twenty? A. No, I did not.

Q. Never heard of it? A. No. I knew that that matter was considered by contractors and was talked about; and in fact they were making some claims for the compensation —

Q. Exactly. A. But they didn't get it.

Q. Well, it was a mooted question, at least? A. Yes.

Q. And then, before you actually made the contracts, that law was declared unconstitutional by the United States court. A. I don't recall that. That hadn't any effect on these contracts at all.

Q. Wasn't that at least a reason for trying to get a better price? A. Not that I know of. I don't know anything — I am not — that is something that I am not familiar with —

Q. Yes, I understand. A. —and therefore I can't answer your questions on that line.

Q. I want to find out what facts you were considering with regard to that matter when you did re-let one contract and you didn't re-let the others. A. Simply as I told you — because of the single bid on that contract, and it was legal that we should have more bids on that contract.

Q. Did you know why the contract for No. 13 was assigned by the Bradley Company to McMullen-Snare & Triest? A. I haven't the slightest idea. That was an arrangement between —

Q. Never had any conversation with any of these parties so that you might know whether or not the Bradleys got a compensation for that assignment? A. I never had any talk on that with them at all. We had a number of assignments of contracts —

Q. Didn't Bradley make $400,000 on that assignment, do you know? A. Not to my knowledge. I don't know anything about it at all; never heard of it.

Q. In a general way, what matters under these contracts rested in your discretion? A. None at all.

Q. As to the amount of work? A. I simply made my recommendations to the Commission with reference to letting the contract.

Q. Nothing about the work under the contracts after they were let? A. After they were let?

Q. Yes. A. Why, I simply had the general supervision of the construction of the work.

Q. Didn't you have a discretion as to whether the tunnel should be impervious to water — the amount of concrete to be used? A. No, no.

Q. Didn't you have any discretion as to the amount of concrete to be used at any of the places in those tunnels — subways, I should say? A. Your question is a difficult one to consider. I don't know just exactly what you mean by discretion as to the concrete. We had planned for certain forms of construction and they were generally adhered to.

Q. Yes. Didn't you have a discretion as to the amount of concrete, for instance, that would underly the subway — the thickness? A. I had discretion to this extent — that if we happened to get to bad ground, and it proved that it would be necessary to increase that concrete for any reason, I had the discretion for doing it.

Q. Well, what was the minimum provided for by the contracts? A. I can't recall. It is shown on the plan.

Q. Were the subways made impervious to water or were they made so that drainage would be taken care of in a sewer? A. One or the other.

Q. One or the other? A. Yes. Well, we used out best efforts to make them impervious, but there is always on all subway work or all underground work, in spite of every precaution we could take, there is apt to be some leakage, more or less, and some places more than others. And we always provided for possibilities of that kind, and provide drainage sumps and pumps, so that if there is any drainage we can take care of it.

Q. What is the average thickness of the concrete underneath the subways? A. I can't recall. It is, I think, about a foot.

Q. About a foot? A. That is, in the thinnest part.

Q. Yes. A. You know, there is a track over there and the minimum in the middle of that track is the lowest part of the floor.

Q. Yes, I know. A. And from this down to the bottom of the concrete — I am speaking from recollection now — I think it was about a foot.

Q. Do you know what the thickness of the bed of concrete in the old subway is? A. It was about the same.

Q. About a foot, under the old subway? A. Yes. In the plan it generally called for —

Mr. Moss.— That is all I want of you now.

Senator Thompson.— I want to ask you a few questions. There is a law — a labor law — regarding the prevailing rate of wages, and regarding the eight-hour day and all that. Does that require to be inserted into the contracts that you have? A. Yes.

Senator Thompson.— And who looks after the enforcement of these provisions in the contracts? A. If there is any complaint about anything of that kind as there have been in a number of cases, it will come to the Commission and be investigated and considered, and then it will go to the comptroller.

Senator Thompson.— The city comptroller? A. Yes.

Senator Thompson.— The engineering department, then, has nothing to do with enforcing those provisions? A. They can only report them.

Senator Thompson.— Well, do they do that? A. Yes.

Senator Thompson.— What is your rule about it? A. We don't report them unless we hear of them.

Senator Thompson.— Yes. Well, do you have inspectors? Don't they ever see anything? A. They do. They see what they are there to see.

Senator Thompson.— They see what they are there to see. Do they see anything else that happens to occur while they are there? A. Well, I don't know what you refer to.

Senator Thompson.— Well, have they any instructions as to what they are to see while they are there? Do they see everything that occurs? A. They are supposed to keep track of the work and see that the work is carried on according to the specifications.

Senator Thompson.— Do you have rules? A. Yes.

Senator Thompson.— Will you send me a copy of the instructions or the rules in regard to your inspectors? A. Yes.

Senator Thompson.— In relation to observing as to whether or not the provisions of the labor law are carried out in these contracts? A. There is no specific provisions as to labor law. The instruction is, "You see the contract is followed out." So they see that the contract is followed out.

Senator Thompson.— Well now, suppose that the labor law requires that eight hours be all that they work the men under this contract. I guess that was required, wasn't it? A. That seems to be what they do.

Senator Thompson.— Well, if they work a man ten hours and the inspector knew it, would he report it? A. I don't know.

Senator Thompson.— Well, would he? A. I don't know whether he would or not.

Senator Thompson.— Does the rule require him to? A. I don't know whether it specifies that particularly or not.

Senator Thompson.— Well, if it did? A. Those matters have been brought to our attention many times, I should say, but I don't know whether it comes through the inspectors or through complaints.

Senator Thompson.— Well, now, if that did occur and they worked their men over eight hours and the inspector knew it and did not report it, what would you do to the inspector? A. He'd have to be disciplined.

Senator Thompson.— Well, how would you do that? A. I don't know; it depends upon what the Commission would do. That is a matter —

Senator Thompson.— What courses of discipline do you have in hand that you can use? A. You can suspend a man, without pay, or the Commission has power to discharge him.

Senator Thompson.— Well, in this case when an inspector knew that the requirements of the labor law were being violated and did not report it, then, if you found that were true, you would discipline him by either letting him off without pay or discharging him? A. Yes; that is right.

Senator Thompson.— That is what you'd do? A. That is right.

Senator Thompson.— Well, that is what you would do? A. I have no discretion in discharging anybody.

Senator Thompson.— Who does? A. The Commission has.

Senator Thompson.— Oh, the Commission. They discharge and hire all of your men? A. They discharge and hire them.

Senator Thompson.— So that it would be up to them? A. It would be up to them. There would have to be charges preferred, and so forth.

Senator Thompson.— I don't think this would be a proper question to ask you, but do you know whether or not, if the Public Service Commission knew that the requirements of the labor law were being violated, would that affect the validity of the bond given on these contracts? Do you know whether it would or not? A. I don't know.

Senator Thompson.— You don't know. I didn't think you would. Is there any sum of money that you have known or understood in certain vocations that was regarded here or been settled here as the prevailing rate of wages? Have you ever heard of that? A. We have frequently had the question.

Senator Thompson.— I know the question has been up a lot, but it has never been decided in any way so that you can tell what sum is a rated wage. A. No; it has never been definitely decided and it never can be because you never can tell what is in a man's mind and what attitude he may take as to whether he is being paid the prevailing rate of wages.

Senator Thompson.— Yes. That phrase is a statement in the law that can hardly be enforced, can it? A. Yes.

Senator Thompson.— I see. That is all.

Senator Lawson.— Mr. Craven, may I ask, has the Commission as a whole, or a commissioner individually, power to discharge your assistants or engineers? A. All of the men excepting, I think, about thirteen in my corps — I think the number is thirteen — are protected by the civil service law. They are all

taken from the civil service list and none of them can be discharged without cause. And that would mean that charges would have to be brought and the Commission would investigate it.

Senator Lawson.— And if many of these inspectors were found negligent in their duty and you wanted to reprimand them, would you reprimand them through an individual commissioner or through the Commission as a whole? A. Through the Commission as a whole.

Senator Lawson.— As a whole. Not acting individually? A. No. I never knew of an individual or commissioner doing so.

Senator Lawson.— You mean with the whole Commission? A. Yes.

Senator Lawson.— That is all.

Mr. Moss.— I asked you a question, too, about the concrete — rather, about cement, as to the storing. How should cement be kept in bags where it is waiting to be used? A. We require it to be kept under cover.

Q. (Mr. Moss.) And what does that mean? A. With a shed over it?

Q. A shed over it? A. Well, yes; a shed over it.

Q. And what is the purpose of the shed? A. To keep out the moisture — to keep out the weather, the rain.

Q. Yes. Well, cement is apt to absorb moisture from the atmosphere. A. You can't prevent that where you haven't got it in a dry building with the heat on or something of that kind.

Mr. Moss.— That has been covered.

Senator Thompson.— It has been covered. If this cement gets the moisture in it, that hardens it? A. That hardens it.

Senator Thompson.— And if it does harden is it any good? A. It is apt to deteriorate.

Senator Thompson.— You say apt to. As a matter of fact, when it is set once, can it be reset without being sent back and rekneaded and reburned? A. Well, that is a mooted question. I

have had samples of it myself — having it become pretty hard and apt to pulverize.

Senator Thompson.— Yes. Well, you would hardly take chances on any of that in the work? A. Well, we do not permit it where we know of it.

Senator Thompson.— On a great deal of this work here, if the cement isn't properly set, it may some day cause a lot of trouble — might cost even loss of life. Isn't that true? A. Well, it isn't a question in connection with the subject we are dealing with now. It isn't a question of its being properly set. It is by way of the question of slow setting, as I told you.

Senator Thompson.— But you are building these structures, and you are using concrete? A. Yes.

Senator Thompson.— At points where it is very necessary that the concrete be properly made. Isn't that true? A. What?

Senator Thompson.— I say, where you are using the concrete in this work, it is necessary that the concrete be properly made? A. Yes.

Senator Thompson.— Because if not it might cause an accident some day that would cost a good deal? A. It might deteriorate.

Senator Thompson.— And it would cause an accident, wouldn't it? A. We are looking out for those.

Senator Thompson.— I see. Well, it should be looked out for very carefully.

Mr. Moss.— May we ask how you know?

Senator Thompson.— Of course, I don't know about that, but I want to know if it should be, in your opinion as an engineer?

Mr. Moss.— The method by which you look out for it. A. We have an inspector who is on the ground and sees that this concrete is mixed — sees that the proper proportions of material is put in and that it is properly mixed when it goes in the work.

Mr. Moss.— Well, you frequently use the words, "properly mixed." By that you mean a complete mixture of the elements? A. I mean a complete mixture; yes, sir.

Q. (Mr. Moss.) In proportions? A. That is, the proper proportions of material put in there and the proper amount of water goes in, and then that it goes into the work in a proper condition. We use mechanical mixers and there is very little chance of getting anything wrong unless the proportions of material are put in wrong, and that simply means that if you don't get the proper proportions of the cement in you won't have quite as strong a concrete.

Mr. Moss.— Yes, If we don't use all the documents we asked you to bring to-day, will you keep them separated so they may be referred to afterwards? A. Yes, sir.

Mr. Moss.— When you return to your office, if they haven't been all used to-day, will you keep them separated so we can get them without you having to hunt them? A. Yes; I will.

Mr. Moss.— Thank you.

Testimony of DUNCAN D. MCBEAN.

Mr. Moss.— Mr. McBean.

Mr. McBean takes the stand; is sworn by Senator Thompson.

Mr. Moss.— Will you state your full name, Mr. McBean?

Mr. McBean.— Duncan D. McBean.

Q. (Mr. Moss.) And your business, Mr. McBean? A. Contractor.

Q. How long have you been in the contracting business? A. Over forty years.

Q. Residing at the Waldorf-Astoria? A. I am at present.

Q. Will you state the firms in which you have been a member as a contractor? A. How far back?

Q. As far back as you like. A. I am not prepared to answer that question now.

Q. Well, within the last — A. For instance, I will give you some of the most prominent work. I can give you a list of some of the most prominent, at least.

Q. Yes, at least. A. For instance, I was in the firm of Moss, Chambers & McBean, who built the La Salle Street tunnel in Chicago. I was concerned in work that was done toward building a tunnel in Detroit in 1872; that was important. I was a member of the firm of Platt, Chambers & McBean, who did the first work work that was done in bridging the Cascade in Oregon. I built the North Pacific Railroad from Spokane to Falls de Cheyenne. I, in conection with others, built the Blue Mountain Road for the Oregon Railway and Navigation Company. I built the Washington Territory Road in Oregon. I built some of the piers for the Snake River bridge across the Snake river, Washington Territory. I built the Siskiyou tunnel, the first portion of it, when the work was suspended by Mr. Vallier. I was one of the firm of Brown, Hard & Company, who built thirteen miles of the Kootenac. I was one of the firm of O'Brien, Sheehan & McBean, who did work on the Fisher river. And skipping over a lot of minor work, the last work I did of any prominence was the building of the tunnel under the Harlem river, which the Rapid Transit Railway is now using. That is the last important work.

Q. That is the tunnel running from 145th street, isn't it? A. In the neighborhood of 145th. From 145th street on the Manhattan side to 149th on the Bronx side.

Q. Yes. You have devoted a great deal of attention to subway questions and work, haven't you? A. I invented the method that is known as the trench method of building sub-aqueous tunnels.

Q. And did you use that method in building the tunnel that is now in use in the subway that is running? A. I built that tunnel that is now in use.

Q. Under that method? A. I afterwards built the Detroit tunnel by that method, and built the Lexington Avenue tunnel by that method.

Q. That method was widely noted at the time you built the tunnel under the Harlem river, wasn't it? A. It was.

Q. Published in newspapers and illustrated, not only in the technical journals but in the daily papers? A. It was.

Q. That was a work that was largely done in the open air and dropped down upon the bottom. I don't want you to go into the method, but a great deal of it was done in the open air, wasn't it? A. Simply stated, it is a method of building a working chamber under the water in which you build the tunnel. In other words, building a hole in the water to build the tunnel.

Q. Yes. A. That is what it is.

Q. You did some of the work on the original subway, didn't you? A. Yes. On the original subway, this Harlem River tunnel that I built.

Q. I am speaking now of the land side. How far did it go on the land side? A. My contract extended from 135th street on the Manhattan side to, I believe, Gerard avenue — I think it is Gerard avenue — if I am right, on the Bronx side. That included the tunnel under the river as well as a certain portion of land work.

Q. About a mile of land work? A. Less than a mile.

Q. Yes. Well, you have kept an interest in subway work ever since it started, haven't you? A. I have kept posted on what is being done.

Q. Watched it and figured on it? A. I have.

Q. Can you state what, approximately, was the cost of the old tunnel construction per mile — the old subway construction? A. I cannot, offhand. It varied.

Q. The average, I mean. A. I cannot.

Q. The contract price was about $35,000,000, wasn't it? A. The MacDonald contract for building the subway as he built it was $35,000,000, which was the contract price.

Q. Yes. Well, can't you give an average price per mile based on that? A. I don't know. I haven't that just now in mind. I think this tunnel is —

Q. Well, now, I am asking you these questions preliminary to asking you questions about the tunnel. I am getting at the general situation. A. I made an estimate here about a year ago comparing the old cost of the old tunnel —

Q. I'd like to get that. A. With the new tunnel and I found that comparing, taking the same number of feet of the new tunnel and MacDonald's old tunnel and making a fair average of cost per mile, that what MacDonald built for $35,000,000 — actually built

for $24,000,000, but it cost the city $35,000,000 — is now costing the city $110,000,000.

Q. Well, let's see. When you say tunnel, you mean the subway generally? A. I mean the subway — speaking of the subway.

Q. You say that in that $35,000,000 there was $11,000,000 profit? A. $11,000,000 profit.

Q. In construction? A. Yes, sir.

Q. So that the actual cost, which is the cost to MacDonald and his contractors — sub-contractors, was $24,000,000? A. That was what he paid the sub-contractors for —

Q. He paid the sub-contractors $24,000,000. A. $24,000,000.

Q. Well, the sub-contractors made a profit on their side, I suppose? A. I did.

Q. You did; you were one of them. And on the basis of $35,000,000, which included $11,000,000 of profit, if I have got the figures right, you say the cost per mile, comparing the present situation, is about three times? A. About $110,000,000 as compared to $35,000,000.

Q. Yes, it is nearly three times. Well, in making that comparison, were you able to compare figures — for instance, figures of excavation? A. Now, I take it the same sized cars are to be used in both tunnels. The cost is made by increasing the size of the tunnel in —

Q. I know, but the price, we will say, per ton or per load for excavation. Did you go into that? A. No, I didn't go into that. I took it per foot.

Q. Per foot? A. Yes.

Q. Well, what ordinarily is a fair price for excavating earth? Just the ordinary subway excavation in the City of New York. A. That depends on the conditions where the earth is.

Q. Average, at least? A. You cannot answer a question of that kind, because where it might be done in some places at five cents, in other places it might be worth $3. You can't make an average of that kind; it depends on circumstances.

Q. Well, have you see any figures for excavation under the present contracts? A. I have.

Q. How high has it run? A. It has run very high.

Q. Up to what figures have you seen it? A. I have seen the bids quoted as high as $9 a yard where I was paid at most —

Q. Nine dollars a yard for what? A. For excavation.

Q. Of dirt? A. Of earth.

Q. Of earth? A. Yes.

Q. You consider that a high price? A. Well, I did my work up there for $3.

Q. Your work up there for $3? A. Yes.

Q. Was your work as difficult as the work that you saw at $9? A. It was fully as difficult, if not more so.

Q. Now, what figures have you observed for rock excavation under the present system? A. If I remember right, I have seen figures as high as $17 a yard on some of these lower sections in New York.

Q. You consider that high? A. Well, I'd like to get or find a gold mine in which the rock would pay as well — $17.

Q. If you could find a gold mine where the rock taken out of the mine, the gold ore, would assay $17 a ton, you'd think you had a bonanza? A. Yes.

Q. What have you hitherto considered to be a high price for rock excavation in the City of New York? A. Oh, it depends again on circumstances.

Q. Well, take a difficult place — a difficult situation. A. In the subway work?

Q. Yes. A. Why, $6 or $7 is a very good price, on an average.

Q. Did you hear any of the testimony this morning regarding the Bradley contracts, so-called — the Lexington Avenue contracts? A. I did.

Q. Have you ever had occasion to notice whether or not there was a change, a general change, in the cost of materials between October, 1910, and July, 1911? A. Prices were lower in July, 1911, than they were in October, 1910, in general.

Q. Was that generally know throughout the contracting business? A. It was.

Q. Do you know whether or not the Workmen's Compensation Act was considered by contractors in figuring upon jobs of this kind when it was in force and before the decision that declared it unconstitutional? Was it considered? A. It was.

Q. In your judgment, at what percentage would it figure? A. From ten to fifteen per cent. The average would be from ten to fifteen per cent on a man's bid — that law would.

Q. Yes; and then, of course, when the law was declared unconstitutional, that ten or fifteen per cent could be taken off the price in an estimate? A. Yes, sir; yes, sir.

Q. Do you believe if all of these contracts had been readvertised in July, 1911, lower prices would have been obtained? A. When these contracts were let first, on Lexington avenue, I was given to understand that there was an arrangement between the contractors, the city contractors, and the surety companies —

Q. The surety companies? A. The surety companies, that any outside bidder coming in would have to put up with them the full amount of the bond.

Q. That is, he'd have to secure the surety company? A. The surety companies — which was excessive — made it at that time $500,000 a section, which cut off many bidders.

Q. What do you mean by outside bidders? A. Well, I mean bidders that are not in the "pull."

Q. Not i nthe pull, not in the combine?

Senator Thompson.— You don't mean outside of New York? A. I mean outside of New York, and a great many in it.

Q. (Mr. Moss.) Well, were there men in New York who were outside of the combine? A. I am one of those.

Q. You are one of them. Now, to make this clear: If you had made a bid, your understanding of the situation was that a surety company would have required you to deposit $500,000 in cash before they'd go your bond? A. No; I can't answer yes to that, because I probably could cut the bond down to a reasonable rate. But as I understand, that was the general understanding, that made the bid so high on that October 26th contract.

Q. What did you understand was the line upon which the chosen were decided — those who were "all right" and those who were not "all right"? What was the line of division? A. Well, I don't know as I could explain it. It is a pretty thin line.

Q. Thin? But thin as it was it was recognized? A. Yes. Oh, it is well known that you have got to have a pull here if you want to do work of this kind, with the Public Service Commission.

Q. With the Public Service Commission? You mean that, do you? A. I mean that; yes.

Q. You have got to have a pull. A pull with whom? A. With those who have the power to put the screws on you.

Q. Do you mean the Commission? A. I do.

Q. You do? A. I do.

Q. Well, do you mean anybody behind the Commission? A. Oh, I don't know. It is necessary to be in with pull here if you expect to do this work.

Q. Yes. Well, was the advertising for bids in September, 1910, taken seriously by the contractors? Did they believe that they were going to be let? A. When they first advertised for bids, in September, I took no interest in any of them except the river, possibly — except the building of the tunnel under the river at Lexington avenue.

Q. The river and Lexington avenue, yes. A. I went to see Mr. Willcox as soon as they were advertised and asked him if they — if the commission would receive bids on an alternate plan. He said they would not.

Q. Now, what do you mean — pardon me, pardon me — what did you mean by "alternate plan"? A. An alternate plan is a plan that you make up yourself, a plan for work that you make up yourself instead of the plan that is fixed by the Commission for you to bid upon.

Mr. Moss.— Yes.

Mr. McBean.—Railroad companies generally — for instance in the letting of the Cortwright tunnel the New York Central Railroad prepared the plans and they also gave the contractors permission to submit alternate plans. That is, he gave me to understand that they would not receive them. I told him then that it behooved the city of New York to look into those plans; that as they were designed they were a fraud upon the city of New York.

Q. What plans have you reference to — were a fraud upon the city of New York? A. The plan that was then advertised was plan type "H" and type "K" for a tunnel under the Harlem river and Lexington avenue.

Q. Now, your testimony from that point, I think, Mr. McBean, will relate specifically to that section, and will include that tunnel under the Harlem river. A. Yes.

Q. That is the section you were discussing with Mr. Willcox and your testimony will relate to that particularly. Now, go on. A. The river portion of that?

Q. Yes. A. I then wrote a letter to the mayor with regard to it.

Q. To the mayor? A. To the mayor — Mayor Gaynor; and I have got a copy of that letter here — pointing out to him that it was a fraud, and with it submitted a plan further for the tunnel, showing how it would be made much cheaper.

Q. Yes. In what particular did you say it was a fraud?

Senator Thompson.— Have you got a copy of the letter?

Q. (Mr. Moss.) Now, this is before the contract was let? A. This is before any bids were received at all. The letter is dated September 25th. I sent a copy of that letter to each of the Commissioners — Public Service Commissioners — at the same time I sent it to the mayor. Later, after the bids were received, I again went to see Mr. Willcox. I asked him if he remembered receiving my communication about this before. He said, "Yes; you are the man that said we were all damn frauds here." "No, I didn't say you were all frauds. But there are some frauds here." He says, "Who are they?" "Whoever drew up that plan, they are frauds." And he says, "You prove it." "Well," I says, "you sit down here and I'll prove it to you."

Mr. Moss.— Just a little louder, please.

Mr. McBean.— So we sad down at a table, and he had before him a copy of the contract plans, and I had before me a copy of the plans, that being in this letter, which is a copy of their plans, on a new scale. I said to Mr. Mr. Willcox," These plans are only a picture to you." "Oh," he says, "that's not trusting my intelligence." I put it down on the table, and I says, "It is not. You needn't tell me that for the length of time you have been here that you could master these intricate plans." So we sat down again and I pointed out from my plans — that being in this letter

— where this fraud existed. He made the remark "Oh," he says, "our tunnel is a great deal bigger tunnel than that." "Well, that proves here just what I have said, doesn't it? Because this is your tunnel on this, my, smaller scale." I pointed out to him that there were two plans submitted with the obvious object of having competition. Those two plans —

Q. (Mr. Moss.) Two plans submitted, obviously or apparently to get competition? A. Competition. One of these plans was designated as type "H," and the other was designated as type "K." Now, if you will give me a copy of those plans —

(Mr. Moss produces copy of plans.)

I pointed out to Mr. Willcox that type "H" was designed so as to be divided into two sections, two tubes in each section, instead of the four tubes being in one section. I told him that I had come down to the commission the May before — May, 1910, — and asked Mr. Craven to let me see the plans that were drawn up and he refused to do so. I told him — I says, "You want to remember, Alfred, that I can build the four tubes in one section for very much less than two tubes." And he leered at me, "Can you?" and left me there.

I pointed out to Mr. Willcox that by putting those tubes into two sections instead of putting the four in together that it created the necessity of four heavy retaining walls instead of two. I pointed out to him that the metal in the type "H" weighed some 24,000,000 pounds in the tunnel, which was about a little less than 1,100 feet long, more than the metal that is given in type "H;" and that the metal itself in type "H" was heavier than the metal that is used in the building of the tunnel under the East river down here, which has a head of water of some 70 feet on top of it, whereas this would only have 35; that the metal itself in type "H" with dirt filled around there would make a stronger tunnel than the tunnel under the East river; and that this had been loaded down evidently with the purpose of defeating the object of that plan.

Q. That particular plan was made too heavy and too expensive? A. Too expensive.

Q. And it was put in as merely in competition with the other plan? A. With the other plan.

Q. The other plan, which was less desirable, had a lighter weight of material to provide, and consequently though less useful it would cost less. I want to get the record straight. A. Yes, 24,000,000 pounds more metal in the type "H" in the 1,100 feet of tunnel than there would be in the type "K." The quality of the concrete exterior to the tubes in type "H" is made 1, 2, 4; that is, one of cement, two of sand, and four of broken stone; whereas in the other it is made one of cement, three of sand, and six of broken stone. In the one case it would be as 14 is to 25. And although this metal was so much heavier, so much stronger, placed the other metal, nevertheless there is just as much concrete placed on the inside on the one as there is on the other, and the same on the outside. When I got through pointing this out to him —

Q. Well, in substance the specifications were so drawn as to damn one form and commend the other? A. Well —

Q. So far as estimates were concerned? A. We will reach that a little further.

Mr. Moss.— A little further. Oh, all right.

Mr. McBean.— I pointed out to him that in the type "H" contract — under type "H" form of contract — that the metal shells were in each of the two sections, were combined together to form twin tunnels — that is, there was no space between the two tubes; whereas in type "K" each of the metal tubes was made separate and distinct, with a space in between them. And that it was evident to me that there was an object in this that wasn't made plain in the plans and specifications. It was evident to me that this plan type "K" showed on these plans was as in a portion of the tunnel built in Detroit. The tunnel built in Detroit instead of having the twin tubes — built in twin tube form, that is, so there would be no space between the tubes jointly, where there was here a space left between each of the two tubes; but the tubes in that tunnel formed a complete circle — each of them formed a complete circle and were separated, a space of three feet between them. And it was obvious to me that something of that kind was

proposed to be done here — flatten the side of the tube. You see, they haven't each metal shell forming a complete circle, which adds to the strength of it; they flatten the sides of it.

Mr. Moss.— I see.

Mr. McBean.— But the terms of the contract made it prohibitory to do it as it was done in Detroit because a clause in the contract provides in regard to the concrete, on page 49, section No. 153, that concrete shall not be flooded with water before being thoroughly set. Now, in Detroit the concrete was deposited around outside of these metal shells in the water, and it was obvious to me that something of that kind was intended with this type "K," nevertheless, the specification prohibited. And another thing that I pointed out to Mr. Willcox — that the lowest bid they received for this type "H" at the first letting, 1910 —

Mr. Moss.— Yes.

Mr. McBean.— — was some $2,200 a foot; whereas I built that Harlem river tunnel for John B. McDonald for $666.66 a foot.

Q. (Mr. Moss.) Hold on now, that seems too much of a difference. You say you built a tunnel — A. The lowest bid that was received for type "H" in the October 26th, 1910, letting, was, if I recollect right, some $2,200.

Q. $2,200, that is, bid on the pending tunnel at Lexington avenue. A. That was bidding on the tunnel — the proposed tunnel, then.

Mr. Moss.— Yes.

Senator Thompson.— Mr. McBean, now this matter was up a year ago. There wasn't any investigation into it, but for your information, what was reported to me I will give you: The report was made to me that you made a bid on this work, on your type, and the other fellow made a bid under his type, and got it.

Mr. McBean.— I didn't make any bid at all in the 1910 letting. I claimed this was a fraud; and I was invited to bid. Mr. McMullen came up to me at two different times; said he had this

thing all fixed and wanted me to join him. I refused to bid with him in 1910, and was not interested in any bid. I was interested in showing that this was a fraud.

Senator Thompson.— That was a letting at which the contract was awarded, or was that the letting after there was a reduction. It seems McMullen made a bid up here and then later a subsequent bid and got several million dollars less, didn't he?

Mr. McBean.— Yes. Now, this is 1910 I am speaking of now.

Senator Thompson.— When was the contract awarded? A. The contract was awarded in 1912. Oh, the letting. That was made in May, 1912, I believe.

Senator Thompson.— Well, did you bid then? A. I was interested in a bid that was made then; that was —

Senator Thompson.— Well, the statement was made then that your bid compared with theirs — that the sub-aqueous portion of your bid was higher than the sub-aqueous portion of their bid. Now, there is the information that was given to us. I wondered what there was in that. A. Yes. Well, I will reach that in explaining it to you. I haven't come to it. Now, if I remember where I left off —

Mr. Moss.— At the point where we stopped, there was the comparison of $2,200 with $666.66. You say that the work which you did at 145th street was at $666 a foot.

Mr. McBean.— And sixty-six cents.

Mr. Moss.— The least bid that they received on the Lexington avenue route, now pending —

Mr. McBean.— Yes.

Mr. Moss.— In 1910 was $2,200.

Mr. McBean.— $2,200, yes. Whereas the Lexington avenue tunnel I built had only two tubes, this had four, but the four tubes, if run in one section, should be less than twice $666.66. And that of itself should show that there was something wrong; and where the wrong was was in the plans, submitted with

drawing. After I had got through pointing these things out to him, Mr. Willcox got up and looked out of the office building, out on the park there, and he says, "McBean, it is damnable to think that those engineers would undertake to rob the city in this manner — out of millions." "Well," I says, "there is not millions involved in this thing." "No; but," he says, "you have showed me so plainly how it is done in your section. How is about the balance?" I told him I hadn't looked over the balance, but I had a conversation with Mr. Barclay Parsons the night before and he gave me to understand that that same condition existed all the way through.

Mr. Moss.— You said that to Willcox — or did Willcox say that to you? A. I said that to Willcox.

Q. That you had a conversation with Mr. Parsons and he gave you to understand that the same condition existed all the way through? A. All the way through on that section. I further told him that I understood that there had been a collusion between the contractors, the bidders — those who bid upon it, to fix it as to who would hit upon it and who couldn't hit it. It was a fraud all the way through.

We spent considerable time. Twice during the conversation a secretary came to the door and told Mr. Willcox a committee was waiting on him, but he said, "I am very interested in what this man is telling me, and wait till I am through." I supposed from that that that would be the end of those contracts — that would end those contracts then. However, in the following July, I one morning picked up a paper and I found that the contracts for the subway on Lexington avenue were being awarded. I went down to Mr. Willcox again.

I says, "Do you intend, then to let that Lexington avenue tunnel contract for that bid received?" He says, "We are thinking of doing so." "Well now," I says, "Mr. Willcox, that is a damned fraud, and I have got considerable to say about it."

"Well now, if you put what you have got to say in writing I will have it submitted in a report to the Board, since I am going off now for a trip to Europe."

So then I sat down and wrote him a letter; that is dated July 31st, 1911. In it one important thing I pointed out to him; you will find it over on the last page.

"THIRD.— The privilege to place the concrete required outside of the metal tubes by the use of a 'tremie.' If it is to be permitted, the specifications should so specify. That it must be used by the Detroit method is well known, hence it should be permitted in carrying out type 'H.'"

I wasn't satisfied with this letter and I followed it up again, by another letter, dated September 5th, 1911, in which I gave him figures to show that —

Q. (Mr. Moss.) That is before the contract was awarded? A. That is before the contract was awarded.

Q. September 5th, 1911? A. Yes. And showed in that letter plainly that the bid was at least eight hundred and some odd thousand dollars —

Q. Yes. You have figures here which are carefully stated, showing a total reduction that might be made by making a fair specification of $813,000. A. Yes.

Q. In other words, the specifications were loaded $813,000? A. Yes. A short time after this they ordered their engineer to make a new set of plans. During January, 1912, while these new sets of plans were being prepared, one of the men who furnishes the cast-iron for this kind of work came to me and said that he'd had a conversation with one of the draftsmen named Damm in Mr. Craven's office who was preparing plans, and Damm told him that McBean wasn't going to make anything by having these plans made out; that this was intended for Olaf Hoff and it was going to Olaf Hoff.

Q. Hoff was a partner of McMullen? And McMullen and Hoff are associated with the United States Realty Company that we were discussing yesterday. A. I thereupon wrote the commissioner a letter, January 12th, 1912, where I pointed out to him — I might as well read that letter — it is a short one — in which I said:

Hon. William R. Willcox, Chairman, Public Service Commission, 154 Nassau Street, New York City.

My Dear Sir.— In regard to the proposed changes your board are making in the plans for the construction of the Lexington avenue tunnel under the Harlem river, I beg leave to point out, that if steel is used instead of cast iron for the tunnel metal lining in plans type "H," that the cost for constructing the said tunnel, as per plans type "H" will be very much less than it will cost to construct it as per plans type "K." One item of saving by this change, will be, that the amount of steel rquired per lineal foot of tunnel, per plans type "H" will be less than the amount of steel required per lineal foot of tunnel to construct it, as per plans type "K;" that is, provided the four tubes are designed on plan "type H" so as to be placed in one structure, as they now are placed in type "K" plans.

If your present plans type "H" are changed so that the four tubes comprising the tunnel are placed in one structure instead of two structures and steel is used instead of cast iron for the tunnel metal lining, it will enable the tunnel to be constructed in a structure which will be at least 7½ feet less in width than the width of the structure that will be absolutely necessary to construct it, as per plans type "K." This is so, from the fact, that the thickness of each of the three partition walls between the tubes may be made at least 2 feet 6 inches less in width than the width that is necessary for each of them if the tunnel is constructed as per plans, type "K." Hence the saving thus obtained in the amount of material and excavation required for the contruction of the tunnel will amount to a large sum of money. These facts I am prepared to demonstrate.

With great respect,

Very truly yours,
(Signed) D. D. McBEAN.

I heard nothing more of the letter until sometime in April or May, 1912. The new plans came out, and the work re-advertised. And instead of being limited to two sets of plans, there was a

third set included which was designated as type "L." And type "L" put in four tubes in one section, instead of having two in two sections as it was in type "H." That reduced the width of the tunnel structure from 81 feet as in type "H" to 65 feet. The tunnel structure was reduced — the width of the tunnel structure as it is in the old type "H"— down to 65 feet.

I found that in that it also reduced the type "K" and the type "H." It is very interesting to see how they reduced it. In the type "K" they reduced the height of the structure 9 inches — no, in type "H;" that is it. In type "H" they reduced the height of the structure 9 inches only. But in type "K" they reduced the height of the structure 3 feet 6 inches.

Q. Three feet 6 inches? A. You know they have got to compete now with the type "L." They reduced the width of one of the structures. These reductions in type "L," in dollars and cents, would probably amount to less than $75,000. But McMullen and Hoff reduced their bid a million — nearly a million dollars less, because they had to compete with type "L" structure. Instead of making this type "L" with steel, and using the same quality of concrete, 1, 3 and 6, as in type "H," as I suggested in my letter, in this they have cast iron metal. It will run 24,000,000 or 25,000,000 pounds greater in this than it will in type "K." And besides this extra cost of concrete, nevertheless it reduced the price down so that they were obliged to reduce this down to nearly a million to get the work. When the bids were opened it was found that McMullen and Hoff were still the lowest bidders in type "K." I had bid in connection with John F. Stevens. I believe the bidders beat us some $45,000.

Senator Thompson.— John F. Stevens was interested with you? A. In the bid on that work. And how this was done —

Mr. Moss.— Yes, that is interesting.

Mr. McBean.— Why, an extraordinary letter from Mr. Craven to the Commission explains it. Have you a copy of the letter?

Mr. Moss.— I have no copy of Mr. Craven's letter.

Mr. McBean.— Well, this is the way it reads. This is the secretary's report to the Public Service Commission. They were considering the awarding of the contract.

May 14th, 1912.

The Public Service Commission to-day (Tuesday) awarded the contract for the construction of section 14 of the Lexington avenue subway to Arthur McMullen, the lowest bidder, for $3,889,775.05. This is about $1,000,000.00 lower than Mr. McMullen's bid for the same section in September, 1910, when the plans called for a big bore subway.

Section 14 runs from Lexington avenue and 129th street in Manhattan to and under the Harlem river to about 135th street in the Bronx. It is 3,176 feet long. The subway will be carried under the Harlem river in four steel tubes encased in concrete. This was known as type "K" in the bidding. Mr. McMullen's bid was not only lowest for type "K," but the lowest for all types submitted.

The next lowest bid for type "L" which called for four cast iron tubes laid in concrete, and was by the O'Rourke Engineering Construction Company for $3,972,943.95. The lowest bid for type "H" which calls for four cast iron tubes laid in pairs in concrete, was by the John F. Stevens Construction Company for $4,207,198.50.

Q. (Mr. Moss.) That is your bid? A. That is the bid I was interested in.

At the last meeting of the commission Mr. John F. O'Rourke, president of the O'Rourke Engineering Construction Company, made an appeal to the commission to award the contract to his company on the ground that the cast iron tubes could be laid better than the steel tubes.

Mr. O'Rourke's argument was laid before Alfred Craven, chief engineer of the commission, who made the following report upon it at to-day's meeting:

"I have the secretary's letter of May 10, referring to me for report a communication from Mr. John F. O'Rourke, president of the O'Rourke Engineering Construction Company, in which after making certain statements, he states as follows:

"'So we beg to say in conclusion that in view of all the facts, our (O'Rrouke Engineering Construction Company)

bid is lowest and most advantageous to the city and that we should be awarded the contract.'

"Mr. O'Rourke also submitted certain papers and a pencil plan showing his proposed method of construction, and undoubtedly the construction of the tunnel could be carried out under this plan.

"I beg to say that before submitting the original plan for type 'K' in 1910, I had carefully looked into the matter of construction under the so-called 'Detroit river' method of sub-aqueous tunnel construction, and had also consulted Mr. Olaf Hoff, who it may properly be said actually did the work of construction under the Detroit river and is familiar with all its features. Had I not been perfectly satisfied as to its feasibility at that time, I would never of course have submitted such plan, and having no reason to change my ideas in this respect, I, for readvertising this contract, resubmitted similar plans under a somewhat reduced size of bore of tube. You can well understand, therefore, why I could not disapprove the form of construction for which I had plans drawn, having full knowledge of the feasibility of building the tunnels under such form of construction.

"Mr. O'Rourke speaks of the impracticability of putting these tubes in place. In consultation with Mr. Olaf Hoff before making the original plans in 1910, and again on Saturday last, he tells me that he considers it a much easier proposition to place the tubes in the Harlem river than it was in the Detroit river; that the depth is not so great and that he could practically lower the tubes in position during a period of an hour or two of slack water.

"As to the point raised by Mr. O'Rourke in regard to the material that may be encountered in the Harlem river as compared with that in the Detroit river, Mr. O'Rourke is mistaken in stating that the material in the Detroit river was more stable. As a matter of fact, the clay in the Detroit river as soon as disturbed became in many instances a running mass, and also in places springs were found in the bottom of the river, which converted this clay into a soft mud as soon as it was reached. In the Harlem river we have

below the silt, which is the first material encountered in the river bottom, a very substantial sand and gravel, and little or no trouble was found in handling this material in the construction of the present tubes under the Harlem river.

"Mr. O'Rourke makes another objection in reference to the use of salt water in mixing concrete. Our specifications, it is true, provide that salt shall not be added to the water in mixing concrete. This is simply to avoid a common method in cold weather of using a certain amount of brine in the water for mixing concrete in order to prevent its freezing. The concrete as prepared and as it will be deposited around the tubes in the Harlem river is mixed with pure, clean water, and there is no reason to suppose that when this concrete is deposited that this clean water will be forced out and that salt water will take its place, and even should a certain amount of the salt water permeate the concrete, it would do no harm. It is a well-known fact that concrete is made strong under salt water.

"Mr. O'Rrouke takes the ground that the steel may deteriorate. It really makes no difference if it does. The structure is plenty strong enough to stand all stresses without the adding of either steel or cast iron —

Mr. Moss.— That is, Craven is willing that the steel tube should rust out.

Mr. McBean.— And the cast iron, too.

Mr. Moss.— And willing that the concrete around it should have a certain amount of the river in it.

Mr. McBean.— So he says.

"— the structure is plenty strong enough to stand all stresses without the adding of either steel or cast iron. These shells are more for the purpose, you might say, of forms to enable the construction of the tubes, and they take the place really of water-proofing and prevent water entering the tubes. The rusting out of either the steel or cast iron in the future will not resolt in greater permeability to the

structure — in fact, it may act just in the other direction. However, with the thorough protection that it will have with the concrete, there is no reason to suppose that it will corrode and deteriorate in any respect. The large amount of additional concrete in excess of that really needed for strength is to overcome the flotation of the tubes, and further as a protection of the tubes in cases of vessels that might sink in this portion of the river.

"I have been asked by the secretary in making this report to comment on a point made by Mr. McBean in a protest similar to Mr. O'Rourke's and that is that we should provide for benches for passengers in all the tubes"—

Let me explain in regard to that. As these plans were drawn there is no chance to get out of the train.

Mr. Moss.— You can't step out of the train in case of accident or stalling?

Mr. McBean.— It is not provided for at all.

Mr. Moss.— No place to walk on? The plan that you contend for has a bench running the whole length of the tube, hasn't it?

Mr. McBean.—A bench the whole length of the side.

Mr. Moss.— Now wait a minute, Mr. McBean; have you that provision upon the subway tunnel that is now running under the East river?

Mr. McBean.— No. They have cut holes more frequently than those two in the other ones.

Mr. Moss.— So you can pass from one to the other?

Mr. McBean.— But they are here quite a distance apart.

Senator Thompson.— Well, there isn't any way for a passenger to get out from the train in any of these subways anyway, is there? They are supposed to stay in there until they stop?

Mr. McBean.— Well,—

Senator Thompson.— The question of the convenience of passengers isn't taken into account to any great extent.

Mr. McBean.— In the new subway they have placed the ducts on the inside, which forms a bench on the side wall where it would be practicable to get out and walk.

Senator Thompson.— There is.

Mr. Moss.— Will you continue the letter, Mr. McBean?

Mr. McBean.— Yes.

"— The same argument might be applied to our four-track structure as designed through the streets of the city. We provide no benches for the center tracks — only for the side tracks, and this it may be said was done simply because we transferred our ducts to the inside of the tunnels, and in making this duct bank we provided this very desirable walk for traffic in either direction, and in the case of the inner tracks, openings through the partitions are provided, which will permit passengers to go through these openings to reach the walks on the duct benches, and similar openings will be provided in the tunnel section.

"I will also call your attention to the bids. There were 17 bids received for the contruction under the river. Of these, three were for type 'H,' six for type 'L,' as advocated by Mr. O'Rourke, and eight for type 'K.' In looking over the list of the bidders I find that the bids were all made by contracting firms of generally acknowledged ability, and I cannot for a moment assume that any of these parties bid on anything that they would consider as an impracticable form of construction.

"I will also call your attention to the fact that in the bids received on October 27th, 1910, the O'Rourke Engineering Construction Company were bidders on this same type 'K,' so that they must have felt at that time that it was possible to construct the tunnel under that plan.

"Finally, in view of my firm belief that the construction is perfectly practicable and that the tunnel when built under type 'K' will be just as good a structure as under any other type, and in view of the fact that the low bid of Mr. McMullen was $83,000 less than Mr. O'Rourke's bid and

considerably less than any other bid for any other form, I must adhere to my report of May 9 and recommend that the contract be awarded to Mr. McMullen.

"I will further add that we call for no definite method in prosecuting this work, although the method to be adopted is subject to our final approval.

"We are not concerned in the question of patents; the contract makes the contractor liable for any infringements on patents; almost every conceivable method of sub-aqueous tunnel construction seems to have claimants for patents at some time or other.

"I return herewith Mr. O'Rourke's letter with the accompanying enclosures, including the pencil sketch. I have made a tracing of this sketch for preservation, which I did with his consent."

Now, this letter let the cat out of the bag, that this work was going to be done in accordance with the Detroit river tunnel, which is not this plan at all. And all you have got to do is to get the plan, see how the tunnel was built, and compare the two and see that it is not with this plan the tunnel has been done. I have been trying to get —

Q. (Mr. Moss.) You mean to say that the tunnel as constructed — A. The tunnel as constructed is not built in accordance with that plan.

Q. Not built in accordance with the plan upon which the bid was let? A. Upon which the bid was received.

Senator Thompson.— Does it cost less money the way they have built it than it would cost to follow the plan, the specifications, under which it was let? A. I would have to make figures on that. It is plain to me that it is less than it would cost. I have no figures on that to answer that question directly. Now, this plan provides that the steel shall be all covered at least 3 feet in concrete.

Mr. Moss.— Yes.

Mr. McBean.— As this tunnel is built the steel projects right out to the water's edge.

Mr. Moss.— And the tunnel as built does not follow the plan in that respect? A. Does not follow the plan at all. This plan here shows that these tubes are connected with what is known as lattice work. That is abandoned.

Q. Well, who would have the power to omit those requirements? A. Why, evidently from this letter of Mr. Craven's —

Q. He assumed it? A. This was a prearranged scheme between him and Mr. Hoff that if he got the contract he was going to be permitted to do it in accordance with the Detroit plan.

Q. In accordance with the Detroit plan?

Senator Thompson.— Mr. Hoff was interested in the bid to which the contract was awarded, and that letter shows that Mr. Hoff gave Craven the advice under which he originally drew the plans; and then afterwards, saw him before the letting? A. Sure.

Senator Thompson.— I see.

Mr. Moss.— And the connection, Mr. Chairman, with the United States Realty Company has already been proven. Hoff and Kenner were partners. Kenner was the president of the United States Realty.

Mr. McBean.— And further, it shows that it would have to be done in direct violation of the specifications, because the specifications provided that the concrete must be allowed to harden and set before it is flooded with water. And here they are going to dump the concrete right into the water.

Q. (Mr. Moss.) They dumped the wet concrete right into the water? A. Right into the water. If I had the bid to build, if I had been the lowest bidder on the thing, why, they would have said to me, "You build according to specifications." And I would have had to put that concrete in without dumping it into the water.

Q. And you bid upon such things? A. I had to. It didn't make any difference what anybody said to me; I was contractor enough to know that I'd follow my specifications, and if I didn't some taxpayer could come in and stop the whole business.

Senator Thompson.— Well, another thing now. If they had been made to follow the specifications, and the contract, too, couldn't they have done it for their bid? A. Yes.

Q. (Mr. Moss.) For the amount of that bid? A. Yes. They had a million dollars profit on it.

Senator Thompson.— On their bid? A. Yes, I figured on making a million dollars out of my bid.

Q. (Mr. Moss.) You figured on a million dollars profit in your bid? A. Yes, yes, I did.

Q. Well, then you know. A. I know about it. I would have made that much out of it. This let the cat out of the bag. Here was a prearranged scheme between the engineer and Hoff that if he got the contract he'd be permitted to put that in under the Detroit method, contrary to the specifications, notwithstanding that I called the commission's attention to that in my letter of July 31st.

Q. Is the Detroit River fresh or salt? A. Fresh.

Q. Is the Harlem river fresh or salt? A. It is salt water.

Q. Does salt water act more fiercely on iron than fresh water does? A. And the sewerage greater than either. The Harlem river is nothing more or less than a sewer. All you have got to do is to drop a pail down into it at 9 o'clock in the morning and pull it out, and it will be full of sewerage matter from top to bottom. To dump concrete into it is a crime.

Q. To dump concrete into it is a crime? A. Why a fraud. Another point. You notice in these plans here that here it provides for the piles driven all along underneath here.

Q. As in the plans there would be piles driven into the bottom underneath the tubes. A. Underneath the tubes.

Mr. Moss.— Yes.

Mr. McBean.— But curiously enough, although the tunnel is built, at so much per lineal foot, the bids are received at so much per lineal foot for completed tunnel. The piles are bid separately; a separate price for piles. Mr. Craven well knew that when I built the Harlem River tunnel that my tunnel was rested on a pile foundation all the way through; that it was absolutely safe

and sure there. He knew that I hold a patent on that. He knew, through Mr. Hoff, that they had got a subterfuge for building these piles by putting them in with concrete instead of in this manner. In that, this exemption is made here. You see, if Hoff got it, why, he'd use —

Q. He'd use concrete? A. He'd use concrete.

Q. If you got it you'd use piles? A. I'd be glad to use piles.

Q. And you'd have got the same figure? A. It would not have been higher. I would not have arranged with the engineer; and that is why he beat me. He had these advantages: That if he had to put this work in under the specifications, the concrete in under the dry way, he would have had to adopt my plan or build a cofferdam. It is not restricted to my plan at all, because we have built tunneds before my plan was known, and we built by cofferdam. But there wouldn't have been any money in it for them. When this was made known, that they were going to permit the Detroit method, I then wrote to the Commission directly, and pointed out this fraud.

Q. You wrote the commissioner that there was a fraud in allowing that work to be done under that plan — by the Detroit method? A. The Detroit method.

Q. You wrote to the commissioner. Who do you mean — Mr. Willcox? A. I wrote to the Public Service Commission. I will just find a copy of that letter here. Here is a copy of a letter, May 13th, 1912.

Senator Thompson.— I wish you'd show the way they did this work in detail — how the way they did this work was cheaper than the way they bid on — the way the contract was let. In other words, the manner of construction, the method of it. In other words, how, under the Detroit River tunnel method of construction, they made more money. Otherwise, we will have to take this and put an engineer on it to figure it out. Can you tell that, Mr. McBean? A. Well, not offhand.

Mr. Moss.— Who can do that? A. The best way is to get an engineer. He is competent to take the plans and figure it out just as well as I can.

Mr. Moss.— Mr. Chance can do that.

Mr. McBean.— Mr. Chance can do that.

Mr. Moss.— Probably can do it at a minimum. Let's get that other correspondence in. What date is that? A. This letter I wrote to Mr. Willcox is on page 51.

Q. What date? A. On May 13th, 1912. That is the letter that Craven refers to in his report. Now, just at this time, Mr. Shonts, the president of the —

Mr. Moss.— The Interborough.

Mr. McBean.— Interborough, telephoned to Chairman Willcox that his engineers — that is, the engineers of the Interborough — advised him that if that tunnel was built as per type "K," it wouldn't be a safe tunnel to operate; and advised Mr. Willcox to investigate this. And Mr. Shonts informed me that Mr. Willcox had promised he'd do so. Nevertheless in less than an hour after this conversation they awarded the contract.

Q. In less than an hour after that very conversation? A. That very conversation.

Mr. Moss.— Yes.

Mr. McBean.— But curiously enough, Mr. Willcox did not vote on that recommendation awarding the contract to McMullen and Hoff.

Mr. Moss.— Well, he knew there was a majority for it.

Mr. McBean.— And then it went to the —

Mr. Moss.— Now, wait a minute, just at that point. We found in the files of the mayor's office a letter from Mr. Shonts on this very subject, and think I will read it in here:

Interborough Rapid Transit Company,

June 6th, 1912.

To William J. Gaynor, Chairman, Board of Estimate and Apportionment:

I understand that the Public Service Commission has forwarded to the Board of Estimate and Apportionment what is known as plan "K" for the tunnel construction in that

section of the Lexington Avenue subway under the Harlem river, which section begins at 129th street and terminates at 135th street.

It is our opinion that what is known as plan "H" would be the most satisfactory type of construction; because this plan separates the four tracks into two separate and distinct tunnels, and further because it provides for a walking platform on all tracks on which passengers could disembark in safety in case, for any reason, the train operation should become interrupted in this section of the tunnel.

I may add that type "H" is the plan of construction of the present subway under the Harlem river, and as you know it has been satisfactory in operation, and it has the further advantage of being the type which not only the Interborough engineers, but the city engineers have successfully executed in construction before.

Inasmuch as this matter will shortly be before the Board of Estimate and Apportionment for its action, I take the liberty of presenting to you, in this way, our opinion.

Very truly yours,

T. P. SHONTS,
President.

I bring that in as corroboration for witness at this point. Rather an interesting sidelight, too.

Mr. McBean.— It then went on, and I addressed to him then a letter that you will find under date here of June 10, 1912, on page 62, where I went over the matter.

Senator Thompson.— This is the case where Mr. Hyde represented some companies?

Mr. Moss.— Mr. McBean will tell you all about that. I will ask him now: Did you have any conversation with Mr. Hyde about these figures — Charles H. Hyde? This is on the Chairman's question about Mr. Hyde representing some companies. A. About the time that Hyde was being tried, he used to frequently come up to the Waldorf and visit a friend of mine who kept a

family, who were known to his father and grandfather before him. And in that way I became acquainted with Charles Hyde. And one of the statements he made up there was that he'd been offered $2,000,000 to have those contracts, Lexington Avenue contracts, awarded.

Q. (Mr. Moss.) The Bradley contracts? A. The Bradley contracts.

Mr. Moss.— That was why they were held up? A. Now, that is a statement he made. I didn't ask him whether it was held up or what. But he volunteered that statement.

Q. Was that before the contracts were awarded? A. That was before the contracts were awarded.

Q. Did he say who offered it? A. No, he didn't say who offered it, nor I didn't question him. Another time he sent for me, if I remember right, to his office, and he told me that he had been engaged by some parties. He didn't tell me who; he wouldn't tell me who; I asked him to assist in having this work awarded to John F. Stevens — this award that I was bidding on, interested in — and he, there in my presence, wrote a letter to Mayor Gaynor. And now that is all I know in connection with that.

Mr. Moss.— Yes.

Mr. McBean.— What the contract selected was, I don't know now.

Senator Thompson.— The letter is in evidence.

Mr. McBean.— And that is the only talk about which I know.

Mr. Moss.—Do you wish to continue with this to-night, Mr. Chairman?

Senator Thompson.— It is five o'clock. I think we can do better by starting about on time and by quitting on time.

Mr. Moss.— I would be very glad to work that way.

Senator Thompson.— Give notice now. It might be around 11 o'clock to-morrow.

Mr. Moss.— Is this a convenient point for you to take a recess, Mr. McBean?

Mr. McBean.— Just as much so as for anybody else.

Mr. ——.— Might the Chairman ask the witness if the subject matter of Mr. McBean's testimony was ever brought to the attention of the city comptroller, about the things that he speaks of or any other questions that are investigated here?

Mr. Moss.— I believe it was brought to the attention of Mr. Prendergast.

Senator Thompson (to witness).— He asked me to ask you the question, and I will do it.

Mr. McBean.— We haven't reached that point yet.

Senator Thompson.— Well, then, to-morrow morning.

Mr. McBean.— Yes.

Senator Thompson.— Will you come again in the morning, Mr. McBean?

Mr. McBean.— Yes.

Senator Thompson.— There is a thing that I want explained, but I will ask you that in the morning.

Recess until Thursday, May 4th, at 11 A. M.

MAY 4, 1916

MUNICIPAL BUILDING, NEW YORK CITY.

The meeting was called to order at 11:15 A. M., Senator Thompson presiding.

Mr. Moss.— I wish to say before we resume that the witness in his testimony used and testified from the maps of the tunnel produced by the chief engineer of the Public Service Commission. These maps showed the tunnels and the sections of the tunnels and the specifications in general. These were before the witness and he referred to the illustrations in them.

After Mr. Craven had succeeded in having the Public Service Commission award the contracts to his friend, Olaf Hoff, they were then referred to the Board of Estimate and Apportionment, and I have learned from Mr. Craven that they intended to deposit this concrete in water instead of following the specifications.

Testimony of Mr. McBEAN; examination by Mr. Frank B. Moss. (Witness is sworn.)

Q. You mean deposited in the salt water of the river? A. Yes. I then addressed a letter to the Board of Estimate and Apportionment, and it is dated June 10, 1912. It commenced on page 62. The Board of Estimate notified me that it had been referred to the comptroller. The comptroller was then absent in Chicago, at the convention. On his return I addressed a letter to him, dated June 25, 1912, which begins on page 69 of this pamphlet; it is dated June 25, 1912. A few days after that the engineer, Mr. Frazee, telephoned me that Mr. Prendergast wanted to see me down at his office. I went down to his office, and I there met Mr. Craven, Mr. Hoff and one or two others, and Mr. Prendergast announced that he would give us fifty minutes to hear what we had to say.

About the first thing that Mr. Prendergast said himself was that he didn't see that the Board of Estimate and Apportionment had any right to investigate the contracts, the Public Service Commission's contracts. I then said to him that if that was the case I didn't see that I had any business before them. But I said to him from his letter of Mr. Craven's, which is written here, it is evident that they intend to do this work in direct violation to these specifications. There is no specification that provides for them depositing the concrete in the water.

Q. Did you show the Craven letter to him? A. No, I do not remember.

Q. Did you bring the terms of the Craven letter to him? A. It was a matter that was well-known at the time.

Q. You showed your reason for believing that the specifications were not going to be required? A. Oh, yes. I told him that there was no specification that would permit the work to be done in that way. He turned to Mr. Craven and said: "Isn't there specifications of that kind?" "Oh," he said, "we

never write a specification for building a tunnel." I then made it a matter of record by writing the comptroller on July 3rd, the date of the meeting.

Q. Give the year. A. 1912. I wrote as follows:

Hon. William A. Prendergast, Comptroller, City of New York:

Dear Sir.— In order to make the record complete, I desire to say:

In regard to the awarding of the contract for the construction of section 14 of the Lexington Avenue subway, on which you held a conference this morning. As I understand from what you said, you take the position that the Board of Estimate and Apportionment have no right to investigate how the Public Service Commission plans are prepared by their engineer. The chairman of the Public Service Commission, at an interview I had with him in July, 1911, in regard to the plans as they were then prepared, said to me: "We cannot investigate into the plans. We are not engineers. We are financiers."

This shows that the Public Service Commission's engineer, to whom is entrusted the preparation of plans, can give partiality to his friends in preparing plans, although the partiality to his friends cost the public several hundred thousand dollars more than it otherwise would cost.

In my letter I clearly show that this was done in the preparation of the plans for section 14 of the Lexington Avenue subway — a wrong that the comptroller by virtue of his office ought to have the power to thwart. Or, if he has not the power, in the interest of the public he should take such steps as are necessary to have it thwarted.

Very truly yours,

(Signed) DUNCAN D. MCBEAN.

This letter was followed by a reply from him on the same day, which is given in this pamphlet. I then wrote him again on July 5.

Q. What did he say in reply to your letter — the principal points? A. I will quote the letter:

Department of Finance, City of New York,

July 3, 1912.

Mr. Duncan D. McBean, The Waldorf-Astoria Hotel, New York City:

Dear Sir.— Your letter of even date has been received. You again say that the plans prepared by the engineer of the Public Service Commission for the tunnel under the Harlem river are going to cost the public several hundred thousand dollars more than it otherwise would cost. It may be that you feel you have made a very convincing argument upon this point, but I must say to you, with no desire to hurt your feelings, that you utterly failed to establish this point at the meeting this morning. You had every opportunity to do so and my object in inviting you and all others interested to be here at one time was for the purpose of affording all interests an opportunity to hear what each one had to say.

Very truly yours,

(Signed) WM. A. PRENDERGAST,

Comptroller.

I afterwards learned that the Comptroller had already made his report in regard to this matter, and it dawned on me that this meeting was simply to make it appear as if this matter had been investigated — that is that I had been given a hearing — and by referring to Mr. Matthewson's report, you will see that.

In reply I replied as follows:

New York, July 5, 1912.

Hon. William A. Prendergast, Comptroller, City of New York:

Dear Sir.— In your letter of July 3, 1912, you say that I was given every opportunity to establish my case in regard to the tunnel under the Harlem river, at the informal meeting

you held that morning. I wish to say to you that I do not feel this to be true, as I had had no notice that I was expected verbally to restate my case, and made no attempt to do so. I had stated my case in my letters and I went to the meeting, as I supposed, for the purpose of answering any objections that were made to my statements in those letters. I was constantly interrupted in my remarks by the engineers, and was also given a grave blow by your remarks (as I understood it) early in the meeting, that the Board of Estimate and Apportionment have no right to investigate how the Public Service Commission plans are prepared by their engineer. I have every confidence in your wish to be impartial in this matter and your desire to do what is best for the city's interest, and therefore, further beg your indulgence.

When the first set of plans for that tunnel came out, I showed in my letter of September 19, 1910, written before any bids were received, that the partiality of the engineer to type "K" was so plan and palpable that I considered it a fraud on the City of New York and therefore would not bid on the work, and would do all I could, which I did, to expose it. This was followed by my letters of July 31st, 1911, and September 5, 1911, to the Public Service Commission. In the latter, I gave figures to show the tunnel should cost at least $815,000 less than the lowest bid received October 27, 1910, for that work, the result of which was the bids were declared off and new plans ordered. Under date of January 12, 1912, I wrote to the Public Service Commission as follows:

"If your present plan type 'H' is changed so that the four tubes comprising the tunnel are placed in one structure instead of two structures, and that if steel is used instead of cast iron for the metal lining (as it is in type 'K') that the cost of the construction of said tunnel on plans thus modified would be very much less than it would cost to construct it as per plans type 'K.'"

This resulted, as Mr. Craven, the engineer admitted in your presence, in having a new type (type "L") introduced in the new plans. This new type "L" required much less material to construct it than was required by type "H,"

which in the first set of plans was the only competitive type with type "K." The new competitive type "L" forced McMullen & Hoff, who claimed to control the patents on the method for which type "K" is specifically designed, to make their bid of May 7, 1912, nearly $1,000,000 less than their bid of October 27, 1910 (not to exceed $100,000 of this reduction is due to the diminution of one foot in the diameter of the tube), although the engineer in his partiality to type "K" handicapped type "L" to the amount of about $382,000 by designing its metal lining to be cast iron instead of steel. In like manner, a handicap was placed on type "H" of about $422,000.

Steel, as a metal lining, is equally applicable to all the types. It is an insult to the intelligence of the engineer (especially after having it pointed out to him in my letter of January 12, 1912) to assume that he did not perceive when he prepared the plans that if steel were specified for the metal lining in type "H" and type "L" either of those types would be several hundred thousand dollars less than it would to construct it as per plans type "K," and would produce a much better tunnnel.

Although handicapped $382,000 by the cast iron lining, the cost of constructing section 14 as per plan type "L" was dangerously near the cost of constructing it as per plan type "K" (as a comparison of the bids will show). Therefore, the engineer put a further handicap on type "H" and type "L" by specifying for them a much more expensive grade of concrete than that for type "K."

Hence, it is plain that the unjust partiality of the engineer in specifying cheaper material for the construction as per plan type "K" than that specified by him for the other types, the plans prepared by the engineer of the Public Service Commission for the tunnel under the Harlem river, are going to cost the public several hundred thousand dollars more than it otherwise would cost.

This is a wrong, a plainly premeditated wrong, which, if you realize that it will establish a dangerous precedent for those to whom are entrusted the preparation of plans for

structures to be built for the City of New York, if it is not thwarted by the officials of the city, you will not hesitate to take whatever steps are necessary to have it thwarted.

This exposure is a duty which under the circumstances falls upon me, and I ask you to believe me when I say that it is made with the greatest reluctance.

With great respect,

Very truly yours,

(Signed) DUNCAN D. MCBEAN.

I followed again on the same day with another letter which reads as follows:

New York, July 5, 1912.

Hon. William A. Prendergast, Comptroller, City of New York.

Dear Sir.— It is incontrovertible:

1st. That it requires less material to construct section 14 of the Lexington Avenue subway as per plan type "L" than it does to construct it as per plan type "K."

2d. That if type "L" were designed with steel metal lining instead of cast iron, that section 14 could be constructed for several hundred thousand dollars less than the cost to construct it as per type "K."

3d. That if the metal lining in type "L" were made of steel and the plans for it otherwise prepared in good faith, that a tunnel constructed as per type "L" would produce a better tunnel than it is possible to make it as per plan type "K," because all the material used for its construction would be placed in the air and subject to open sight inspection, and less of the metal lining would be exposed to the action of salt water, and there will not be any lateral hydrostatic pressure on its partition walls, which may be composed of steel columns imbedded in a concrete wall of no greater width than they are now designed.

4th. That if the plans were type "H" and type "L" were designed to use steel instead of cast iron for the metal lining, and otherwise prepared in good faith, that on a re-ad-

vertisement of the letting of the work, that bids for the construction of section 14 will be received that will be several hundred thousand dollars less than the lowest bid received by the Public Service Commission for this work on May 7th, 1912.

As the work of constructing the Harlem River tunnel at 145th street was not commenced until about a year after the other portions of the subway were commenced, and it was completed as early as the other portion, goes to show there is yet ample time to permit the re-advertisement of section 14.

On similar information from me in regard to the plans for this work, as they were submitted in 1910, the work was re-advertised with the result that the bids received on May 7th, 1912, were nearly $1,000,000 less than the bids received on October 27th, 1910.

With great respect,

Very truly yours,

(Signed) DUNCAN D. MCBEAN.

I find that again on July 8, 1912, I wrote to Mr. Prendergast, as follows:

New York, July 8, 1912.

Hon. William A. Prendergast, Comptroller, City of New York.

Dear Sir.— I have to-day written to the Board of Estimate and Apportionment as follows:

"As shown in my letter, dated May 13th, to the Public Service Commission, before they awarded the contract, by my letter to the Board of Estimate and Apportionment, dated June 10, 1912, and my letters to the comptroller dated June 25, July 3 and 5, 1912, the partiality in the plans for the construction of the Harlem River tunnel in section 14 of the Lexington Avenue subway, as they are prepared in favor of plan type 'K,' which was designed specially to enable the tunnel to be built by a method of construction on which Mr. Hoff has a patent, is evident.

"It is incontrovertible and must have been obvious to the engineer when designing the plans that a tunnel built as per either type 'H' or type 'L' could be built with less material and would produce a safer and better tunnel, more durable and have better facilities for the purpose for which it is intended and cost less money to construct either of them than it will cost to construct it as per type 'K' if the same kind and quality of material were specified for their construction that is specified for type 'K;' notwithstanding this, the plans as prepared permitted lower bids to be made for the construction of the tunnel as per plan type 'K' than that to be made for type 'H' or type 'L,' through there being specified in the plans a much more costly kind and quality of material to be used for the construction of the tunnel as per type 'H' and type 'L' than that specified for the construction of it as per type 'K,' thereby making the construction of the tunnel either as per type 'H' or per type 'L' cost several hundred thousand dollars more than it otherwise would cost, thus preventing bids received for the construction of the tunnel as per type 'L' to be made several hundred thousand dollars lower than those received for type 'K,' to the prejudice of the McBean method of sub-aqueous tunnel construction that was used for building the present Harlem River tunnel at 145th street.

"This partiality resulting, as it will, if the contract is awarded to McMullen & Hoff, in making thousands of dollars more than it otherwise would cost, makes the plans for section 14 on which bids were received May 7th, 1912, tantamount to a fraud upon the City of New York.

"By fraud, I mean 'an act of deliberate deception practised with the object of securing something to the prejudice of another.'" (Standard Dictionary.)

With great respect,

Very truly yours,

(Signed) DUNCAN D. MCBEAN.

To that the comptroller answered as follows under date of July 9, 1912:

New York, July 9, 1912.

Department of Finance, City of New York.

Mr. Duncan D. McBean, Waldorf-Astoria, City of New York.

Dear Sir.— May I acknowledge the receipt of your letter of the 8th inst., which is the same letter that you have addressed to members of the Board of Estimate and Apportionment, in regard to the proposed tunnel under the Harlem river.

Very truly yours,
(Signed) WW. A. PRENDERGAST,
Comptroller.

The Board of Estimate and Apportionment approved the award to the McMullen & Hoff company. Mr. Maurice E. Connolly, president of the Borough of Queens, was represented by his engineer, who voted against the award, and the newspaper states that he declared before the Commission that it was a fraud.

Q. Do you remember his name — that engineer? A. I do not.

Q. You are stating that the engineer publicly declared it to be a fraud and was so reported in the newspaper? A. Yes, sir.

Q. That is the old borough president of the Queens, Connolly?

A. Yes, sir. I then prepared this pamphlet and issued several thousand copies of it. (Pamphlet marked Exhibit No. 1.) I then watched what was done. I wish to state that during the time that that was pending before the Board of Estimate and Apportionment I was interested in the John F. Stevens bid. I suggested to Mr. Stevens that he get a first-class attorney to go before the Board of Estimate and Apportionment and represent our case to them. There was an engineer present by the name of Cruezbaur. At this time he heard me make this statement to Mr. Stevens.

Q. Pardon me, please. Mr. Cruezbaur is the same man that Mr. Craven spoke of the other day as a knocker, a former consulting engineer of the Borough of Brooklyn. Now, perhaps, we will see in Mr. McBean's statement why Mr. Craven had a dislike for Mr. Cruezbaur. A. A couple of hours afterwards, Mr. Cruez-

baur came into Mr. Stevens' office. He says: "I have had a talk with the president of the Board of Aldermen, Mitchell, and he tells me that there is no use of you sending a lawyer over there; that he knows it is a fraud, and he is not going to permit you to go through with it." That put us to sleep. Mr. Mitchell voted for the award later. In regard to this, Mr. Cruezbaur made several explanations to us afterwards, but I find in a letter he alludes to it. The evidence was written.

Q. (By Senator Thompson.) You have never had any talk with Mitchell about that? A. Never did. When it was announced that Mr. Mitchell and Mr. Prendergast and Mr. McAneny were going to represent the Progressive party in the city here, I wrote to the Times — an article to the Times — and asked them if they didn't made a mistake; that I thought they couldn't name three men that would work more in a gang than the three men named. The Times published it. Mr. Cruezbaur called me down:

New York, August 4, 1913.

Mr. D. D. McBean, Waldorf-Astoria, New York City.

Dear Mr. McBean.— Seeing your letter in this morning's Times, I want to say I am heartily in accord with you in admiring the courageous action which President Connolly took in opposing the award made by the Public Service Commission then before the Board of Estimate. But I do not think you give Mr. Mitchell credit for the work done by him.

Mr. Stevens himself told me he was satisfied that Mr. Mitchell had been personally instrumental in putting off the final action of the board for a week, and I have learned from other sources quite reliable that a thorough and honest and vigorous campaign was carried on in the best interests of the city, which, in this case, happened to be for your own interest.

(Then he goes on about another matter.)

Very truly yours,

(Signed) WALTER CRUEZBAUR.

I then watched what was being done about the work.

Q. Mr. Cruezbaur's interests were contrary to those of Mr. Craven and Mr. Hoff apparently? A. At my suggestion, Mr. Stevens engaged Mr. Cruezbaur to assist in bringing out this fraud. Mr. Cruezbaur wrote a letter, which is given in this pamphlet. He prepared an article on it, and he was there and in Mr. Stevens' employ at the time.

As I said, I kept tab on what was being done on the Harlem river, and I found along in 1913 the work was so far advanced that it showed plainly they did not propose to even build a tunnel in accordance with the plans in this contract. It was practicable to build the tunnel exactly as shown in the plans and in accordance with the specifications, with at least two different methods. It could be built by the old original way of building such a tunnel; or it could be built by my method.

Q. In what way? A. By the method I introduced; and I was watching to see how the work was going to be done. I found that they were trying to steal my method; that is, they were going to build a working chamber in which to build the tunnel in, and the *modus operandi* was to use the metal shells as a mould to mould the concrete. They built on these metal shelves. They dispensed with the drilling work that shone between to hold the planes — to hold the tubes together, each of the tubes in the original plane, or metal shelter, rather. Each of the metal shells was entirely separate from each other There was a space between them. And that they were putting on the diaphragm, such as is used in Detroit. In other words, just making the concrete forms. They were down on a prepared foundation and then they would deposit the concrete into the water around them, and afterwards build the tunnel; then deposit sufficient concrete around them to enable them to pump out the shells and build a tunnel instead of them — which is a direct infringement of my method; which became very interesting to me. And I prepared to commence suit for infringement of my patent. On investigating that, I learned, or found, rather, that between the time that the first bids were received for that tunnel, in 1910, and the letting of the work, that Wilson Kinnear was appointed president of the United States Realty Company, and that Mr. Kinnear and Mr. Hoff being together in building the Detroit tunnel, there was a connection made between

them in regard to this tunnel. The former president of the Realty Company, Mr. Black, informed me that the Realty Company had fifty-one per cent interest in this Harlem tunnel, in the contract of McMullen & Hoff, which was very interesting. And then I went to look up who the Realty Company were, and I found that Mr. Havemeyer was one of the directors of the Realty Company.

Q. William F. Havemeyer? A. I believe that's right. I think they are the initials. He was the father-in-law of Chairman Willcox, and he was living out in the house with Chairman Willcox at the time the contract was let.

Q. At the time the contract was made? A. Yes, sir. So I began then to realize what he meant when it was said they were not engineers — that they were financiers; and investigated further and I found —. Have you a copy of the contract there? (Contract handed to Mr. McBean.)

Q. While Mr. McBean is looking at the contract, I will read a portion of a letter by Mr. Babbage, vice-president of the Realty and Improvement Company to me. He says: "In response to your request of May 2, I write to advise you that Mr. Halley — (Edwin Halley) — was elected a representative of this company and remained until his death." Which I remember was on or about February 1, 1912. Edwin Halley was one of the directors of the Interborough.

Q. I found that although the contract provides (on page 40, section 102) "that for the construction of the tunnel tubes the contractor will be paid at the price stipulated in the schedule item 35 if for type 'H,' item 36 if for type 'K' and item 36 if for type 'L,' which price in each case is to include the tunnel tubes complete." Then by referring over to item 36 type 'K' it reads: "For tunnel tube under Harlem river as per type 'K' per lineal foot of four-track tube complete" so many dollars per lineal foot — $1,500, I think, was paid.

Q. Now, right there, does that form specify how the money is to be computed and paid? Does that form differ from the ordinary form for such a contract? A. It is the only contract, I believe, let by the Public Service Commission where there is an

item such as item 36 where the work is to be completed — where the work is to be paid for as a complete job, and not by units.

Q. And you say that is a peculiar condition? A. That is different from anything else in any of the other contracts that I have seen.

Q. And while you are speaking of that, wasn't there an absence of specifications in the drawings? A. The specifications do not accompany the drawings — they are with the contract.

Q. Well, the specifications and the contract are both unique in that they do not figure up by items which would give a check upon the operations — but give it as a complete single item, a tunnel. A. A tunnel complete — "per lineal foot complete." I then looked up the estimates and found that in their estimate which we would call the October estimate as for work done between October 1 to September 30, 1913, that the chief engineer, Fred Cravens, certifies that there are 432.92 feet of that tunnel completed at $1,500 a foot. Contractors estimated at $648.80 in that estimate, whereas not a single foot of that estimate was completed for months after that, as their records will show.

Q. Well, now, let's pause at that and see if we understand it. Who certifies that the tunnel work is complete up to a certain point? A. Alfred Cravens, in his estimate. That's the estimate they were paid upon.

Q. And it hadn't been done at all? A. There wasn't a single foot completed for months afterward.

Q. Were you watching the operation? A. I was.

Q. And have you looked into the reports showing the time when it was completed? A. I know that from my own knowledge.

Q. All right. Now, this was going on and I called the comptroller's attention to it while it was in progress.

Q. You called Mr. Prendergast's attention to that? A. The letters were addressed to Matthewson; the comptroller's were addressed to the comptroller's office.

Q. (By Senator Thompson.) When was this certificate made? This is the October estimate of what year? A. 1913.

Q. And you say at that time he certified a certain amount of the tunnel had been completed, when as a matter of fact no part

had been completed? A. He certified that when there wasn't a single foot completed for months afterwards. Now, all these points and the changes that were made there between the carrying out of the plan and it not being done in accordance with specifications, were all called to the attention of the comptroller by my attorney, Mr. Charles Mellen. It is all a matter of record, pointing out all these things I have stated; and it is also extraordinary that I am not surprised that it is incredible, but that's the fact, and the record will show just what I state to be facts.

Q. (By Mr. Moss.) Well, do you mean to say that the payment upon that certification was made after your attorney had called the attention of the comptroller to the condition? A. I am so informed.

Q. (By Senator Thompson.) Have you a record of that?

Q. (By Mr. Moss.) Have you a record of that; have you any record with you — any copy of Mr. Mellen's letter? A. I asked for a copy this morning. There are some of Mr. Mellen's letters here, but not all.

Q. Well, I will ask you when you have time to look for that Mellen letter.

Q. (By Senator Thompson.) Is Mr. Mellen available? A. Oh, yes. Furthermore, I commenced a suit of $2,000,000. I made the city a part of the suit and the contractors also. Now I expect, gentlemen, the city of New York to pay me $2,000,000 for that thing. That's all I believe I have to say in regard to that topic.

Q. (By Mr. Moss.) Now, Mr. McBean, I think it would make your testimony more clear to the Committee if you would give, in a way that a layman could understand it, a description of the method which was used by you in building the tunnel from 145th street, which you have applied in your testimony to this new tunnel, and please show how it differs from the method used for driving these East River tubes, for instance, that are now in course of construction. Will you explain your method in a way that a layman may understand it? A. Up to the time that I introduced this method, which is commonly known now among

business — among engineers as the trench method, the *modus operandi* of building them has been (that is the one that was principally used; there were several different ones), the old method of driving under the river —

Q. Well, describe the one that is in common use? A. It is known as the shield method. It was a method that necessitated a tunnel being located at considerable depth below the bed of the river, and in order to make the shield —. (Let me go back.) There was a man named Hastil undertook to build a tunnel across the Hudson river and he got a notion that he could use compressed air to hold up that ground. At the time he started that work I was building a tunnel up here for the city of Albany and he sent for me. He wanted me to join them. He was then starting in on a shaft over on the Jersey side, and I said: "What do you intend to do with me here, Mr. Hastil?" "Well," he says, "I am going to sink this shaft down, and after I get in a ways, then I am going to build a bulkhead and put compressed air in there." He did succeed in getting in a ways from his shaft and commenced using compressed air, and he demonstrated the fact that by keeping the mud — which is this sea mud, almost blue clay — by keeping it perfectly slick that he could keep a pressure in there greater than the pressure of the water. And he was the first man who introduced the use of compressed air. He afterwards adopted the principle of putting in small plates instead of timber. Then this was taken up by a man named Greathed in England, to form a shield which is forced right ahead with compressed air shafts, the shaft to be sunk on the shore, sunk pretty deep.

Q. And then a tunnel driven from the end of that shaft out under the river bed? A. Under the river bed.

Q. And this engineer, Hastil, applied compressed air to the work so as to keep the water out? A. Yes.

Q. Then Greathed invented the use of the shield which is something driven at the end of the tunnel and constantly driven along, extending the length of the tunnel under the river, is that right? A. It's a method, for instance, in the East river. You have got to go right out ahead of the shield and do your digging, and then you force this into the hole that you have made. That's where the danger is. You are using this compressed air, this material at

the head of the shield being earth or whatever it may be, and if the pressure is greater than the depth of water, it blows up. Now we have had some blow-outs and that is one of the dangers of the shield method. It is necessary to have the tunnel at a considerable depth below the bottom of the river and even at that when you meet certain kinds of material a blow-out will occur and cause injury to the tunnel and loss of life will result.

Q. Well, isn't one of the requirements, the necessity of having the tunnel under the river at a considerable depth? A. Yes.

Q. That makes it necessary to have a deep approach to the tunnel, doesn't it? A. Yes.

Q. And it makes the grade established permanently for the use of the trains, a harder grade than it is as a rule? A. Generally.

Q. And one of the points of the method you have described is to cut out the deep tunnel and the heavy grade, isn't that so? A. It enables me to build a tunnel with its roof at the least depth below the surface that navigation will permit.

Q. Now, whatever depth the Department of War establishes for the depth of the river, you can bring your tunnel up to that, can't you? A. Yes, sir.

Q. You lay your tunnel on the bottom of the river, don't you; instead of driving a tunnel under the river, you begin on the bottom? A. Let me correct you there in wording.

Q. Well, I know you dig a trench, but — A. I dig a trench from the top and in that trench I build a working shop in which I build a tunnel.

Q. Now, wait a minute. I want the Committee to see this, and they may not get it from a description which serves your engineering mind — for I am bound to call you an engineer even if you haven't a degree. It took me a little while to understand it. See if I have got it right. You excavate a trench, you put piles along the side of that trench, drive piles in. A. Not essentially so.

Q. Well, that's one of the methods, and you put sheeting along the sides of that trench and the end of it, and that is all cut off at a certain height above the bottom? A. Yes.

Q. Then on pontoons on the surface of the river you have your half sections of the iron tube, is that right, laying on pontoons?

A. That's one of the ways.

Q. And in the open air you put your concrete on those half sections of pipe? A. That's right.

Q. Then you take your pontoon out over the chamber that has been built on the bottom of the river, is that right? A. That is walls of sheets.

Q. And then you sink them? A. Under these walls?

Q. Under those walls. You slip the pontoon from under the concrete tunnel? A. I did that before I sunk it.

Q. Yes; and this tube which has been concreted sinks down and rests upon that wooden chamber, which has been constructed down there. Then your men go to work underneath that with appropriate tools and appliances and complete the lower half of the tunnel?

A. That's right. That's the way the Harlem River tunnel was done.

Q. And that you can do at a minimum expense, a wonderful reduction in the expense of building, is that so? A. Yes.

Q. And you can do it at a nearness to the actual bottom of the river, which is quite an improvement over old conditions? A. Yes.

Q. And establish an easy grade for the transfer afterwards? A. Yes.

Q. Now, have I shown substantially your method and the way that it differs from the old method? A. Well, there are different ways of building a work chamber. That's one of the ways that you have explained.

Senator Thompson.— I want to ask is anybody here from the Public Service Commission? I want the inspectors in charge of the work of this tunnel under the East river — that begins now at the foot of Broadway — within the last week or ten days, and especially the inspector that was there on Monday night, here this afternoon at half past two. A. After I had demonstrated the practicability of my method up here in building the Harlem River tunnel, Mr. John B. McDonald recommended to the Public Service Construction Company that they abrogate the contract with Onderdonk and have him build the tunnel by my method, so that it could be raised thirty-five feet higher than their plans showed. With that in view, Mr. McDonald engaged Prof. Burr to go over to Washington and consult the government engineers and see what

they permit. Prof. Burr learned that they would permit us to raise the tunnel up to within thirty-five feet of the low-water mark. (Remember thirty-five feet was what they were willing at that time the tunnel should be. That's all the water they required then; and also it would give us permission to use stretches of 300 feet of the river at the time of doing the work.)

Then the Construction Company held a meeting, at which were present Mr. August Belmont, W. S. Cornelius Vanderbilt, Mr. Deero, Mr. McDonald and myself, and Prof. Burr; and I pointed out to them that shield method that they proposed to build; I pointed out to them that they couldn't run a train of cars through it when they got it built.

Q. Why? A. They had only allowed themselves three inches' room between the iron and the side of the car, and by the shield method it is impossible to drive these so that you plates will be perfectly true. They are up and down and in and out of line. In the building of the Pennsylvania tunnel the metal shells were made four feet larger than the inside ones, in order that they could afterwards correct it by putting a lining inside, which turned out to be true, because after they had got their hole bored through, they were nearly a year trying to straighten it up so that they could get cars through it, and to-day there are places in it where, instead of the tunnel being a circle, it is an egg shape.

Finally they got it straightened up so that they could run through it.

Mr. Parsons took exception to this; he found fault with the plans, and the result was they lost the contract. But I made this statement to show that Mr. McDonald's idea was of my method.

You find that the present Commission and engineers have got these shield men; got these men whose bread and butter depends upon the shield method.

And I mention, as I said before, this case to show what Mr. McDonald, a practical man, thought about it. And I have taken pains to get other prominent engineers' opinions.

Q. You spoke of Prof. Burr. When did he express an opinion? A. He expressed an opinion in either December or January — December last year, or January this year. John F. Stevens, who

is quite a prominent engineer, expressed his opinion in the letter, which you have a copy of there.

Q. I am going to put three letters into evidence now, dated January 3, by Walter Butler, president. What is Mr. Butler president of? A. The company that built the Detroit tunnel.

Q. And then a letter of John F. Stevens; he is a noted engineer, is he not? A. One of the most prominent in the country.

Q. I quote from the letter now; I am going to have them all copied in; but I am doing this just for the information of the Committee: "The one obvious advantage alone that it possesses over the clumsy, costly method by shield, in that its lesser depth of 46 feet, means that every train passing through the tunnel is saved a rise and fall of 92 feet, would be ample justification for its adoption, even at a greater cost, than a tunnel built by the shield method."

The letter of Mr. Butler is directed in the same way and relates to the same tunnel; it is dated January 3, 1916. And there is a letter of January 10, 1916, by Virgil G. Bogue to Oscar S. Straus. And who is Mr. Bogue? A. He is one of the most prominent engineers in America.

Q. He refers to the 14th Street tunnel, and discusses the matter in substantially the same way that Mr. Stevens did. I will take up that 14th Street tunnel a little later, after recess.

(The three letters put in evidence follow:)

January 3, 1916.

Hon. Oscar S. Straus, Chairman, Public Service Commission,
Tribune Building, New York City:

Dear Sir.— I am well conversant with the plans, as well as the methods of construction, as proposed by Engineer D. McBean, for building a tunnel under the East river at 14th street. I have no hesitancy in saying, as an engineer and constructor, that they present no unusual difficulties in execution, on the contrary, that they are marked by simplicity and economy, both in point of time and cost.

I am free to say that I think his plan is a distinct advance in the science of submarine tunnelling, and that its adoption

as a standard to date will solve some important problems, not only in New York, but in other localities where the questions of time and money are the controlling factors in the situation.

The one obvious advantage alone that it possesses over the clumsy, costly method by shield, in that its lesser depth of 46 feet, means that every train passing through the tunnel is saved a rise and fall of 92 feet, would be ample justification for its adoption even at a greater cost, than a tunnel built by the shield method.

But in point of time by Mr. McBain's plan, a tunnel can be built much quicker. In fact, I believe the river section could be completed before the necessary shafts could be sunk, properly prepared, and the shields bet driven 200 feet from either bulkhead by the old method. And there can be no question but what, in point of cost, it would be less to a marked degree, and as thoroughly complete and safe for service as engineering talent has yet devised.

I have known Mr. McBean and of his work for many years, and am pleased to testify to my faith in his ability and responsibility as an engineer and contractor.

Respectfully years,

(Signed) JOHN F. STEVENS.

January 3, 1916.

Mr. Oscar S. Straus, Chairman, Public Service Commission,
New York City.

Dear Sir.— Referring to the construction of a proposed tunnel under the East river at 14th street, will say that I am the president of Butler Brothers Construction Company, a corporation which was organized and commenced business in New York City and vicinity in 1904, with offices at 1170 Broadway, and was actively engaged in business in that vicinity until a year ago; during that time it did a considerable amount of work on the water front, on both the Hudson and East rivers, and I am personally familiar in a general way with local conditions and the possible difficulties that might be encountered in the construction of a sub-aqueous

tunnel by the open trench method. The problem of constructing such a tunnel across the East river has received considerable thought and consideration by myself and associates, having in mind that possibly, sometime, an opportunity might present itself to build such a tunnel as is now under consideration by your Commission; our conclusion was that the trench method is entirely feasible and practicable; this conclusion has been strengthened and reinforced by the experience gained in the construction of the Detroit river tunnel, which was constructed between Detroit, Michigan, and Windsor, Canada, the sub-aqueous portion of which tunnel was constructed by the trench method. (The Detroit river tunnel was constructed by Butler Brothers Construction Company.)

I understand that your Commission is considering plans and specifications for the construction of a tunnel under the East river at 14th street, and have received tenders for the construction of a tunnel by what is known as the "shield" method, as being the most practical type of tunnel for the location. I am also informed that Mr. D. D. McBean, of your city, has suggested his method of constructing a sub-aqueous tunnel by the "trench" method.

It is my understanding that the Commission hesitates to adopt the trench method for the reason that local conditions present engineering difficulties which cannot be overcome in the trench method. I do not believe that their hesitancy for the above reason is well grounded.

The trench method was adopted for the Detroit river tunnel after all known methods of constructing sub-aqueous tunnels had received exhaustive consideration at the hands of a board of eminent engineers, which board was composed of W. J. Wilgus, New York City; Wilson Kinnear (whom I believe is now president of the Fuller Construction Co., New York); Mr. Carson, Boston, Mass.

The economy of construction and economy of operation on account of more favorable grades, etc., as I understand, was the principal reason for the adoption of the trench method of construction. The experience of the contractor was that

the work was easily and successfully accomplished in every respect.

It is my understanding that Mr. D. D. McBean is the pioneer in the construction of sub-aqueous tunnels by the trench method. I am familiar with McBean's method of constructing sub-aqueous tunnels, and I am convinced that the location of your proposed tunnel does not present any conditions that would justify the rejection of McBean's trench method, and your Commission need not have any hesitancy in adopting the open trench method on the grounds of its impracticability.

I respectfully volunteer the above statement, with the hope that it will be of some assistance to you and your Commission in your efforts to adopt the best and most economical method of constructing a tunnel under the East river.

Yours respectfully,

(Signed) WALTER BUTLER,
President.

January 10, 1916.

Hon. Oscar S. Straus, Chairman Public Service Commission,
New York City.

My Dear Sir.— Mr. Duncan D. McBean, engineer and contractor, contemplates submitting a proposal to your Honorable Commission for the construction of a tunnel underneath the East river, on the line more or less of 14th street, extended, on plans devised by himself and prepared under his own immediate supervision and direction.

Mr. McBean has been informed, however, that objections to his proposal may be raised on the ground that he would not use a shield on the work, but would construct a tunnel of rectangular section by the so-called trench method, having recourse to the principle of the diving bell, in order to secure freedom of action and safety in the several operations that will be necessary.

I have known Mr. McBean for many years, at one time quite intimately, when we were temporarily engaged on the

same work; a part of the Northern Pacific Railway, then under construction. I have since come to know of Mr. McBean's success in various construction undertakings of extreme difficulty, and in common with other engineers who have followed his career, I consider him a genius in sub-aqueous construction of tunnels or foundations. It is doubtful whether there can anywhere be found another man of equal skill in such undertakings; his plans and methods have practically revolutionized sub-aqueous tunnel work. They are a new departure, which introduce economy, safety and speed of construction to a degree never thought possible in the shield or other methods hitherto proposed. They are going to expedite the taking up of projects in the way of construction of tunnels under streams and estuaries, resulting in more rapid development and increase of transportation facilities and other attendant improvements.

A difference of essential nature, namely, the saving of elevation, which will be attained by adoption of Mr. McBean's plan, of 46 feet (92 feet of rise and fall) is sure to result in great economy of construction operations, because men can work practically full time at each reduced depth beneath sea level, while with the depth of 106 feet required by the shield plan, they can put in only a fraction of the time, owing to the greater air pressure. This saving in elevation will also result in greater economy of maintenance and operation.

Very respectfully yours,

(Signed) VIRGIL G. BOGUE.

Q. On the tunnel that is to be the Lexington avenue connection between the Bronx and Manhattan, I understand, Mr. McBean, that the concrete is mixed fresh up above the river and shot down through the tube and deposited wet in the river at the bottom? A. Yes, sir.

Q. (By Senator Thompson.) Now, right there, I want to ask a question. Do they make a form around that iron tube that they drop down there first, or do they just shoot that cement

down there without any form around the tube? A. Outside on the tube they put a steel plate across; it fits right around the tube — one of them every fifteen feet. Then on the outside of that they put a line of wooden sheathing horizontally. That leaves a space between the tube and this line of sheathing.

Q. (By Mr. Moss.) Did you see that in operation. A. I did.

Q. Did you observe the river while that was being done? A. I did.

Q. What did you see? A. Well, it turned the color of the water yellow.

Q. And what was the substance that made the river yellow? A. The cement.

Q. The life and the heart of the cement being carried down on the current? A. Yes. Let me point out that these pipes that they put down are braced. There was one between each tube.

Q. Yes. A. Every fifteen feet. Now, the distance between each pipe is — let me see the plan, and I will show you. (Plans given Mr. MeBean.) They are seventeen feet apart — these pipes.

Q. You mean the pipe that is discharging the concrete? Seventeen feet apart? A. Yes, sir. Now, the concrete, after it leaves this pipe, has to travel that distance to meet.

Q. Now, wait a minute. The concrete dropped from points seventeen feet apart has to move along on the bottom to meet from each pipe — to meet and join and build up? A. Yes.

Q. And they are moving under the moving river — the concrete is coming down under the moving river? A. Yes, sir.

Q. And as much of the salt water as can get into it does, and no human invention prevents it? A. Not only the salt water of the Harlem river, but sewerage matter is the great thing.

Q. And that has a disintegrating power, doesn't it? A. Certainly.

Q. Mr. McBean, do you believe that that is a safe way of building? A. A safe way of building?

Q. Is it safe, yes. A. Depositing the concrete in the water?

Q. Building up concrete in that way, considering that the tubes are to be used for the passage of trains that are to be occupied by

hundreds and thousands of people — is that safe construction? A. No, it is not safe construction, for this reason, not simply from the fact that the concrete was dumped down into the water — it may be dumped down into the water where the purpose of the concrete is only simply for its weight to overcome this buoyancy; it would accomplish that purpose, but between each of those tubes there is a space of two feet of this concrete, and in order to strengthen the sides of these tubes, that is where the tunnel tubes come together, where they meet —

Q. They are two feet apart? A. Yes. In order to strengthen those they have run rods through from one to another. Those rods pass through that concrete, and that concrete is porous. There is no concrete you can make that is not more or less porous, but that is especially porous. Now, it is just a question of time how long it is going to take those rods to rust off. See? And when they do, that tunnel will collapse. It can't help doing it! And those metal shields, when they were put down, were a mass of rust from one end to the other.

Q. Well, Mr. Craven has testified that the iron shields were not necessary. That they could rust out. A. In this letter he so states.

Q. Then you would have to depend upon the concrete to sustain the burden of the tunnel? A. Yes.

Q. Have you ever seen any piece of that concrete since it has been deposited? A. No, I have not.

Q. Do you know any one that has? A. Mr. Craven said that he had seen some that had been taken off the top, and it crumbled, at the time that I called attention to this matter to the office about putting the concrete down in this manner. I am told that there was a sample of this concrete sent down to the comptroller's office, and that Mr. Adamson was handed a piece of this concrete and he put it in his hand and it crushed. "Why," he said, "I supposed that concrete was hard.' "Oh," said Frazee, "you don't understand what this concrete is intended for. It is nothing more or less than to overcome the buoyancy of it." He said it was only intended for weight and not for substance.

Q. (By Senator Thompson.) Well, suppose that in this concrete (I am not a contractor or an engineer, and I may ask my

questions in a strange way) there is some substance that sticks, and the making of it, the mixing of it, makes a sticky thing; that is, it becomes adhesive? A. Yes, sir.

Q. Now, as you put that into the water, in the process of setting, there was some of that that naturally went away with the current of the river, wasn't there? A. Naturally so, and, furthermore, you couldn't get up a device to prevent it. Here it had to run from the end of the pipe to meet the center here — see, after it left the pipe? It had to do that flowing on the bottom.

Q. Well, now, just what portion of that would come out? Would it be the best or the worst? A. Do you mean would be worked out by the river?

Q. Yes. A. The best illustration I can give you of that is this. I have in my possession a full description of the Detroit tunnel as it was built. I expect you will find the same thing in that gentleman's office up there in regard to this tunnel. They report in regard to the concrete. However, in the Detroit tunnel the driver comes up and reports that his sounding with a bar enabled him to touch the concrete. That means there is enough material coming in from the sides to cover over the concrete they put in the day before. There are other places where he finds clear gravel, with the concrete all out of it. And not only once, but here and there and every place, right through in that way.

Q. (By Mr. Moss.) Well, isn't it altogether a matter of guesswork as to how much of the original cement is down there? A. Yes.

Q. You know the heavy stones are there, but how much cement has been washed out, how much light sand has been worked out — nobody can tell that, can they? A. And how many voids are left in there, and where they are.

Q. And salt water seeping through it and attacking the iron tube on the inside and attacking these rods, which are so important. A. Just as soon as those rods in between connecting those rods rust off, which will be in a short time — it will only take a short time to rust off — that will collapse.

Q. And whoever is in the tunnel must collapse with it? A. Well, it may be possible to get out.

Q. Didn't the contract provide that no water should touch the concrete until it became hard? A. The wording of the contract is, on page 49 of section 153, as follows: "Concrete shall not be flooded with water before being thoroughly set."

Q. Well, it is not only flooded with water, but it is drenched with salt water of the East river? A. And sewering.

Q. (By Senator Thompson.) Is that a one, three and six mixture? A. Yes.

Q. That's one part cement, three of sand, and six of broken stone or gravel? A. Yes.

Q. Which portion would be most likely to be washed away by the river? A. Cement.

Q. Were you up there when they run that? Did you see the river at the time they put that down — that concrete? A. Yes.

Q. It changes the whole color of the river below the section where it is put in, doesn't it? A. Yes.

Q. What is the color — white? A. No, it is yellow — not very far from that color.

Senator Thompson.— We will suspend until two-thirty this afternoon. (Adjournment.)

AFTERNOON SESSION.

The meeting was called to order at 2:30 P. M., Senator Thompson presiding.

Mr. Moss.— Mr. Chairman, I just want to state that we found that Mr. Collin, one of the inspectors whom you asked for, is on the night shift, and must report about 4:30 at the job. We find that he hasn't a telephone in the house, but as soon as we get hold of him, we will have him up here. One of the men who is on the shift at the present time is here, and if you want him, he will remain.

Senator Thompson.— We want all of them that you can find that were down there.

Mr. Moss.— Well, there are three of them. The day is divided up into three shifts.

Examination of Mr. JOHN SHEA; Mr. Frank B. Moss, examiner.

Q. What is the nature of your work, Mr. Shea? A. Timekeeper.

Q. For whom? A. Flynn & O'Rourke Contracting Company.

Q. Whereabouts? A. South Ferry.

Q. What are you doing down there? A. Building tubes on the East river.

Q. Do you keep the time of the working men? A. Yes, sir.

Q. How many workmen have you? A. 190; that includes those in the power house and machine shop.

Q. Do you keep the time? A. Yes, sir.

Q. When they work overtime, are they paid extra? A. We don't have any overtime. They work in three shifts of eight hours each.

Q. Well, they sometimes work over shifts, don't they? A. Not where I am. They haven't since I have been there. I have been there since about December.

Q. You have never had any man to hold up a shift? You swear now? A. Yes, sir.

Q. ou nYever had any man that doubled up a shift? A. Well, unless someone didn't come out. I might have had something like a pumphand or something like that. But something happened in a case of that kind.

Q. How many men are on the first shift? A. I should think there was about ninety.

Q. And have you got the names of those men? A. I have the names; yes.

Q. You have the names, not only numbers, but names? A. Names and numbers.

Q. Now, will you swear that no man of those 190 do work at night? A. Well, beside the pumphand?

Q. I am not saying beside any pumphand. A. Well, the pump man that I know would work a shift if the other man didn't come on.

Q. You are not timekeeper for the three shifts, are you? A. No, sir.

Q. Then you can't swear that the men worked after four o'clock? A. No, sir.

Q. But you have been swearing to what you didn't know?

Senator Thompson.— You just tell the truth about it, that's all we want.

Q. Haven't you kept the time of men who worked on a previous shift? A. No; not on previous shifts.

Q. And have any of the men that you kept the time on continued on the next shift? A. Yes; I would say they had.

Q. Now, which shift are you keeping? A. The first shift — eight to four.

Q. And, then, men that have been in your shift have worked on the next shift? A. Yes; I should say they have.

Q. How many of those men? A. I couldn't say. I don't know.

Q. Well, now, think carefully. Give it to me as nearly as you can. A. It is so seldom that one does work overtime that I couldn't say how many it might be.

Q. Who keeps the time of the second shift? A. A man by the name of Gassert.

Q. What is his first name? A. Paul.

Q. Who keeps the time of the third shift? A. Well, we divide the time between us two.

Q. Do you ever take the second shift? A. Only going to work; only in the tunnel; I do. I check those men going on at four o'clock.

Q. So that you know which of your men have gone into the next shift, don't you? A. Yes, sir.

Q. Where are those books? A. Why, I have all of the books down at the job.

Q. They are books which contain the names of all these employees and show the names of the men that have gone from one shift to the other, are they? A. Well, I don't know.

Q. Wouldn't it show? A. Well, they would show if the man had worked double shift.

Q. They would show that wouldn't they? A. Yes.

Q. Do they have the last name, as well as the first? A. We give each man a number.

Q. You told me before that you had the names? A. I do have the names and I give them a brass check, then I only take the numbers.

Q. I understand. Will you describe those — who do the books look like? A. Well, the book I used to check up in the day — I would use any sort of a memorandum book that I had with me, then I entered that time in the time book.

Q. How long does that book last — the first book? A. Sometimes for one week, and sometimes for two.

Q. And when you have entered that in the first book, what do you do with the original? A. I save it for a while lest there should be any kick about the men. I might have one a month, but I don't think I save them a month. I only save it until I get through with it at the end of the week. Sometimes I just take an ordinary pad and check them, because we change so seldom in there that I have the same gangs every day; do you see?

Q. Well, now, I have been thinking about it; about how many men work in the first shift that have been carried over into the second shift in this last week? A. In this last week?

Q. Yes. A. Well, I don't know; there might have been one — that I don't remember.

Q. Who was that? A. The hoisting engineer.

Q. You are sure that was the only one? A. That's the only one that I think of.

Q. In a whole week? A. Yes, sir.

Q. How about last week? A. What's that?

Q. About how many did you carry over last week? A. Well, I don't know; that's pretty hard to remember. I don't remember of any of those men to speak of.

Q. Why did you carry the hoisting engineer over? A. The other man didn't show up. He runs an elevator; he isn't a regular union engineer. The man who relieves him didn't come on.

Q. Are the men paid from the book that you transfer your first ones into? A. They are paid from the book that I have the time entered in that I keep.

Q. The second book? A. Yes.

Mr. Moss.— Would you like to see those books?

Senator Thompson.— I would like a list of the names of these men that he had.

Q. (By Mr. Moss.) The books will show that? A. Yes.

Q. (By Senator Thompson.) It isn't a matter of detail; I don't care anything about one man; but don't you sometimes work these men for more than eight hours? A. No, sir.

Q. You swear that there has no man on that job worked over eight hours a day? A. There might be something wrong with a man and he would work like that, or there might be a concrete man, and he would work a couple of hours overtime.

Q. Don't you work any men overtime? A. We have another shift of men come on every eight hours.

Q. You are sure about that, are you? A. Yes.

Q. (By Mr. Moss.) Is that a tube running to Montague street in Brooklyn? A. Yes, sir.

Q. (By Senator Thompson.) Do you keep the time of the fellow that mixes the cement? A. I only keep the names of the men right there at South Ferry.

Q. You keep all of those men? A. Yes, sir.

Q. And they have a form there, do they? A. Yes.

Q. Where do they make the material that they put in that concrete? A. I don't know where they measure it, because I don't have anything to do with that.

Q. You never saw any measured around there? A. I never saw any measured around there. They must measure it somewhere else. I don't know where they measure it.

Q. You never saw them measure any of it that went in to make this concrete? A. No, sir.

Q. Do you know how they mix concrete — what they make it of? A. No.

Q. You don't even know that? A. I know they put sand and gravel and stone in.

Q. Do you know how much sand, how much gravel and how much cement? A. No, sir.

Q. Is there anytbody in that gang there that does know that? A. I don't think so — I don't know of anybody that does.

Q. (By Mr. Moss.) Where do you take the time? A. At South Ferry.

Q. What are the men doing when the time is taken? A. They are just going to work at eight o'clock in the morning. I check them as they go down the tunnel.

Q. Didn't the men double up on Monday? A. This past week?

Q. Yes. A. Not that I know of.

Q. Do you mean to say that they did not double up? A. Well, I wouldn't say.

Q. Would you say that they did not? A. I can't think just now.

Q. Don't you know? A. I don't want to say they didn't if they did.

Q. Do you know whether they did or they didn't? A. I ought to remember.

Q. Now tell me, did they double up on Monday? A. I can't think of any one that doubled up on Monday.

Testimony of Mr. DUNCAN D. MCBEAN; examination by Mr. Frank B. Moss. (Witness is sworn.)

Q. Now, Mr. McBean, when we were talking about the probability of a collapse of that tube in the East river, I don't think that the record shows clearly what you meant.

You reminded me at recess of the old experiment in physics where a barrel full of water will burst by inserting in the top a long tube. The tube was filled with water, and although the amount of water in the tube was of small circumference, yet it would burst the barrel. Then you reminded me that above this interval between the two tubes was the depth of the river above it exerting its pressure.

Now, if I understood you correctly, there are two parallel tubes with a space of two feet between them, and these tubes are bolted together by iron bolts. Then this mixture of concrete that was sent down through the river in these trimmies would be deposited not only on the outside of the tubes, but within this two-foot space between the tubes, and that action in there — it is porous concrete with voids in it — is subjected all the time to the pressure of the column of water above it. Is that right?

A. Yes, sir.

Q. That is always exerting its pressure? A. Yes, sir.

Q. And when the iron bars corrode, then the effect of that pressure is likely to be so great as to force a separation between those two tunnels or tubes? A. Yes, sir.

Q. Now, of course, there is the mass of cement on the outside of these two tubes, but that itself has been impaired by the action of the water while it was being deposited? A. It would force the inside wall only twelve inches thick.

Q. It would force that wall and the river would go into the tunnel? A. You spoke of it being the East River tunnel. It is the Harlem River tunnel.

Q. Well, I know, but that is a continuation of the East and I often mix them up. Now, Mr. McBean, you had some consultation with city officials with reference to the other tubes that were being built or contemplated under the East river — one at 14th street, I think; another, no, two of them at the Battery — are those three tubes building now? A. Two of them are under construction, I know; they are all let out.

Q. They are all let out? A. Yes, sir.

Q. And the Battery tunnels are being constructed? A. Yes, sir.

Q. And are they using the shield method? A. So I understand.

Q. I wish you would tell the Committee what you did with reference to those tubes — what efficiency you came in contact with and what conversation you had. A. During the year 1913–14, anticipating that these tunnels were going to be built, I submitted several plans to the Public Service Commission for the construction of those tunnels by the trench method, one of which I now report from:

New York City, July 14, 1913.

Hon Edward E. McCall, Chairman, Public Service Commission, Cleveland Building, New York City:

Dear Sir.— I beg leave to inform your Commission that if they decide to build the proposed tunnel under the East river in pairs of two tubes, that if the right of way on the surface is procured and borings into the bed of the river on the side

of the tunnel are made, so as to determine the extent where the bed rock will project above the subway of the tunnel in order to enable an intelligent estimate of construction to be made, that a tunnel with two tubes, as per accompanying plan, can be built for less money and in less time than it is possible with the shield method of construction.

The space on the surface of the river, at any one time between the perfect headline for construction need not exceed the space necessary for a dredge. The rock excavation under the river can be made under a shallow roof placed directly on top of the rock and the excavation of the rock will be done in compressed air under the water with less risk than appertains to rock excavation made in the streets where a roof over it has got to be maintained. The rock can be attacked at many points on the surface, as if it were in the open air and not in the water. Consequently, it can be removed much more rapidly than it can be by lifting it with a vertical face, as it would have to be done with the shield method. Moreover, the tunnels can be built by method of construction that will eliminate the imperiling and sacrificing workmen's lives, as has been done by using the shield method. Not a man was injured in the construction of the tunnel under the Harlem river at 145th street.

Mr. Alfred Noble in his pamphlet, "The Railway Tunnels of New York City," in regard to the shield method writes:

"Even when skill had been acquired and care was exercised, the escape of air would sometimes get beyond control. I have no doubt that as much as forty to fifty thousand cubic feet per minute was blown out during the short period from a single heading. The escape has been as much as 25,000 cubic feet per minute for twenty-four hours or more.

"The most effective way to stop a blow-out was to dump quickly a large amount of clay from a dump above. Many blow-outs are checked in their incipient stage in the tunnel by throwing bundles of hay or sacks or bales of clay into the opening being formed. This involved much danger to the men attempting it. If the attempt failed and a great outburst of air occurred, the men were liable to be drawn into

it and disappear in the river bed. Several such cases have occurred. In recent years only one man has escaped after being drawn into the opening.

"A very severe blow-out, one wrecking the fast protection, will be followed by an inrush of water and earth, and not only the men in front of the shield, but those in the tunnel would be in danger.

"It is wrong that workmen's lives should be sacrificed when there are methods for accomplishing the work that would save doing so."

Mr. Noble informed us also in his said pamphlet that the cost of the plant for the construction of the four tubes for the Pennslyvania tunnel under the East river by the shield method was $2,500,000, which is about five times the cost that would have been necessary had the work been done by the method to construct the present Harlem River tunnel.

I am prepared to show conclusively the practicability of my method as herein set forth.

Very respectfully,
(Signed) D. D. McBEAN.

I have another letter in my pocket which I shall read:

New York City, March 25, 1914.

Hon. J. S. Cram, Public Service Commission, Tribune Bldg., New York City.

Dear Sir.— I see from the enclosed clipping that the Public Service Commission announced that the two tunnels under the East river will be built by the shield method and that the construction of these two tunnels will require the expenditure of from twelve million to sixteen million dollars and that they will take about three years and a half to complete.

I beg leave to inform you that I will construct as per the design sent you on the 14th instant the river portion of these two tunnels, the right of way being furnished, and include the construction of the tunnel under the channel between Bay

Ridge in Brooklyn and Staten Island, which is nearly twice the combined length of the two tunnels for the sum of $12,000,000 and will complete all three of these tunnels in two years and a half.

I can assure you that if proper provision is made for the acceptance of bids based on plans prepared by the contractor and wording of the specifications made in conformity thereof and the right of way being furnished, that bids for the construction of the river portion of the two new East River tunnels will be submitted at less than $6,000,000.

Yours respectfully,

(Signed) D. D. MCBEAN.

In reply to that, on March 27, 1914, I received the following:

New York City, March 27, 1914.

Mr. D. D. McBean, Waldorf-Astoria, New York City.

Dear Sir.— Receipt is herewith acknowledged of your letter of March 25, 1914, addressed to Commissioner Cram, in regard to the construction of the two tunnels under the East river for rapid transit purposes.

The Commission has directed that the proposed contracts for the construction of these sections of the subway lines should be submitted to the operation committee for criticism.

Your communication will be considered in connection with the determination of the final form of these contracts.

Yours very truly,

(Signed) T. H. WHITNEY,
Secretary.

That was the end of that.

Q. Why should these propositions have been submitted to the operating companies for criticisms? A. That's the B. R. T. and the Interborough. They have a great many ways of getting around — having it go to where they want it. They make one excuse and then the other. That's the best answer I can give. That's the way it struck me.

Q. It was proposed that the contracts for the construction of the subway lines should be submitted to the operating company for criticism. Well, your letter was a proposal that you would bid $6,000,000? A. Would guarantee it.

Q. Guarantee it to do what they were ready to pay $12,000,000 to $16,000,000 for? A. If they permitted me.

Q. And their answer was that it would be submitted to the operating company for criticism? A. Yes, sir.

Senator Thompson.— You never heard anything more of it? A. No, sir. I did hear in this way; I was told that Alfred Noble was asked to give an opinion in the construction of that tunnel and that he had instructions to consult with me in regard to my proposal to do the work. I want to say that Alfred Noble is a friend of mine — I want to say that in the beginning — he has been a friend of mine from my young days. I waited a week after I learned of that information and not hearing from him, I went up to his office and his secretary informed me that he had left the Saturday evening before. This was Monday morning I was up there. I was informed that he had left the Saturday evening before for his summer vacation. "Why I have been informed that he was to make a report on my method of digging the tunnel," I said. He says, "He has made such a report." I thought that strange. I wired down to the Public Service Commission and was informed that they hadn't received any such communication. I waited another week; then I went back again to the secretary. I said to him, "Did I correctly understand you to say that Mr. Noble had made his report?" He said, "Yes." "Why," I said, "the Commission tells me that he hasn't made any such report." "Oh, well," he said, "it was in the nature of a private report to the chief engineer, Craven." Then I told the secretary that I understood he was to consult with me before he made his report as to how he proposed to do the work. When Mr. Noble returned he sent for me, and he read me a paragraph from the report — this report that he made. "Now," I said, "Alfred, you have wronged me here. You have labored under the idea that it was necessary for me to have a working platform in the river the same as I used in the Harlem river, which is not essential at all." I then sat down with him and showed him how I proposed to do

the work with plans I had with me. He said: "McBean, I have no doubt in the world that you could do that work; but I would want you to do it." "Well, now," I said, "that isn't hardly fair on account of my age. I can get a man to carry out these plans." "No," he said, "I would want you to do it." "Now," I said, "you have done me a wrong there, and I think you should make this right." He promised me he would do so. I never saw him again because he died very shortly afterwards and whether he ever made it right or not I do not know.

Q. What did he say to you about engineers? A. Alfred Noble?

Q. Wasn't it Noble that said something to you about engineers? A. I know what you mean now. After I had built the Harlem River tunnel I prepared a plan for building a tunnel under the Hudson river, one hundred feet wide, the rotary tunnel, including the rotary tunnel and railway tunnel, and I took it to Mr. Noble. First he said to me, "McBean, when are you going to quit this?" I said, "Quit what!" "Getting up plans for tunnels. Don't you know that there isn't a civil engineer who will permit you to carry out one of your plans. You are a contractor, you are not an engineer." That was my friend who told me that, and that is what is going on to-day. Further, I met the chief engineer of the Erie Railroad in the Waldorf at that time. He said to me, "McBean, where you made the mistake was in patenting your invention. If you hadn't patented it and had turned it over to the fraternity to use, we should have credited it with your name and it would go on; but now we are not going to permit your work to be carried out until after your patents run out."

Q. I want to ask you about the old subway work, about which you knew something. Did you use mats to cover your blasts? A. Invariably.

Q. Did you use mats to cover your blasts when there was decking in the streets? A. We did not deck the street in the old subway.

Q. Do you know whether mats were used when the street was decked? A. I do not — not to my own personal knowledge.

Q. Did you have any conversations with members of the present board of Public Service Commission with regard to these East River tunnels? A. Yes.

Q. State them, please? A. The Public Service Commission last December received a bid for the construction of the tunnel across the East river at 14th street for the sum of six million, six thousand — no; six million, six hundred and odd thousand dollars. I got a copy of the plans and I then wrote a letter to Commissioner Haywood, in which I stated to him that if he would re-advertise that work and permit me to submit an ultimate bid on an alternating plan, that I would guarantee him a bid for a million and a half less than $6,600,000, and that I would raise the tunnel some forty-six feet higher than they had in their plans. He sent for me. He says: "McBean, I was attorney for the Thompson Committee, and have gone into your affair enough to say myself that there was a fraud in that thing."

Q. A fraud in what? A. A fraud in carrying out that Lexington avenue affair.

Q. The Lexington Avenue tunnel? A. Yes. "But," he says, "I find that I am up against it here. I find that the engineers have other reports from other engineers that your method of digging the tunnel is impracticable for the East river." I said, "Mr. Haywood, if you will look over the list of those engineers, you will find without exception that they all get their bread and butter from the shield method of constructing tunnels — every one of them." And he looked it over found it to be the case. I said, "Why not call in another prominent engineer"— and he there in my presence wrote a letter to Prof. Burr. Burr came down. Burr told them that he would stake his reputation on the practicability of building this tunnel. And further pointed out to them that this tunnel should be raised. I proposed to raise it even if it cost more money. Later he had Mr. Burr come back a second time and meet Mr. Williams and Mr. Cram, who were commissioners, and Mr. Burr reported to them that all three of the commissioners agreed to vote for this change. Later, before there was any action taken, the new commissioner came in, Mr. Hodge, and later Mr. Straus. Mr. Straus' first name is Oscar. Next I heard of it they asked me to come down to a hearing before Mr. Straus. Prof. Burr was there, and they sprung upon me this; that the East river is, over near the Brooklyn shore, about eighty feet deep for a short distance, and that the government engineers

wouldn't permit this to be filled up. "Well, then," I said, "this contract that you have let is not unvoid, because it is so provided in your contract."

Q. The very contract had been let? A. The very contract. I said, "You will have to re-advertise that contract." Then this man who has always manipulated everything over there — Whitney; he sprung up the letter from some one of Uncle Sam's officials to show that they wouldn't permit this to be filled up. And in that way they killed it, to make a long story short. I made a proposition to them that I could do this work. He says: "Now, gentlemen, the United States government has proposed to deepen this channel under the East river to a depth of thirty-five feet, and if you will take the government chart of the East river you will find that a Maxwell's Island at the point where the river is only 800 feet wide is only forty-five feet deep." "Now," I said, "this is not a river that is subject to floods, only just subject to the tide going back and forth, and if the bottom of that river was made a plane from the thirty-five feet at this end to the forty-five feet at the other there is certainly going to be an objection — why it would increase the current." However, I made them a proposition that I would widen out the river at this place, take off enough on the side to be equivalent to what would fill up. He said it was no go, that it had already been fixed. I was then notified that the contractors came in and agreed to cut down their time — I believe it was twelve months. The contract was given to them; and the lucky fellows got the business.

Q. Now, is there anything further, Mr. McBean, on the subject of the sub-aqueous tunnels? A. Not that I know of.

Q. Did you hear the answers of Mr. Craven to my questions with reference to the thickness of concrete underneath the old subway construction being about a foot — did you hear that? A. I did.

Q. What have you to say about that? I ask you because you helped build it. What in your opinion is the average depth of concrete underneath the old subway? A. The old subway was built with the view of keeping the water out, whatever depth it might be, to resist the ouside water from coming into it at all. That's optional with the engineer when he makes the concrete,

whether the subway is built so as to keep ou the water or whether they let any water that leaks out of this sewer or doesn't get in the sewer from leaking down the side and coming in at another sewer and running into the tunnel — they pump that out, with the result that their plans show six or seven inches of concrete on the bottom, maybe eight. I will say eight. I think it is about eight inches in places, with the sewer pipe at the bottom of the tunnel. It is up to the engineer whether that concrete is put in as the specifications provide, or whether it is put in in that manner, or put in sufficiently to resist the hydrostatic pressure. To resist the hydrostatic pressure, it may be necessary to have it five feet thick. Frequently on my work it is five feet thick on the bottom. It cost just as much to put in the form for that eight inches as it would if it was five feet; whereas for the eight inches a price of $10 per cubic yard would be a fair price, and if it was five feet it would be more. There is that difference right there that the engineer can make. And he has it in his power to make that.

Q. In other words, what can the engineer do with the contract, the chief engineer? A. He catches you coming and going.

Q. What do you mean by that? A. He has a clause in there in the first place that the plan has got to be satisfactory to him. He knows as little about plans as the ordinary contractor. A contractor is not necessarily an engineer. You have got to make such plans as he agrees to. He has got you there. Then again is the provision that he can come on your work any time and condemn your plans. You have no redress under that contract. That's another point in those contracts as they are drawn. And I know I could do them as cheap, and I know much better than pretty nearly any of them and was very anxious to make a dollar if I could make it.

There is another clause in that contract — if you will give me the plans I can better describe that. Take this section shown right here. We are looking now at section route No. 5, section No. 10, Lexington avenue, 80th avenue to — 80th street to 84th street. It is a cross-section tunnel. Now if this ground was such that it would require timbering on the outside; that is, the ground would have to have timber, you would have to make space outside of these columns here to place that timber. (Indicates.) Your

rails are placed in there horizontally and you can get your weight on them from your through basis. Now, to relieve them you separate — you set up your iron section, and you have got to have room enough inside your timber to set that up, and then you can transfer the weight off of that timber onto this iron section. Under that contract, as it is worded, the engineer has the right to pay you for that or not, as he sees fit. Now, you can make or break any contract.

Q. Would that amount to any considerable item? A. It amounts to a very, very large item. It amounts to so much that it makes it prohibitive for a man who hasn't the pull to come in there and bid on the work. In other words, if a man doesn't stand well with the chief engineer he may have the chief engineer's option exercised against him.

Q. You were telling me something about the benches in which the ducts run conveying electric power? A. In the old subway construction these ducts were placed on the outside of the wall — outside of the walls here. (Illustrates.) The ducts occupied on the outside enough space so that we were given room for this timbering that I was just speaking about. And these ducts come horizontally, you see. After we got our columns in here we could let the weight come in on these and take out our timber. See. Now, in order to place them inside here, they made the width of this (illustrates) four feet deeper.

Q. That is, the inside width of the tunnel, is four feet greater in order to allow the bents to be safe — or supposedly safe. Now, I have had the opinion of first-class electrical engineers on that plan of placing those ducts on the inside. In the old subway every fifty feet these ducts ran in behind there. You will notice a little recess and that's for the purpose of connecting these duct wires together. Here, sometime last year, a fuse burnt out there and came very near killing a lot of people in the tunnel, of course. Now, I am told, that if that thing happened it wouldn't be located in this little spot, it would be continuously through the subway, and that those ducts will eventually have to come out of that tunnel — the first time one of those accidents happen, and it is liable to happen any time.

Q. That is, the accident to the duct on the inside would confine the danger to the inside, whereas if it was on the outside, it wouldn't be in the tunnel at all? A. Except as these ducts — now, they are continuous all the way through.

Q. Well, what might happen to cause an accident in connection with those ducts that are inside — what might cause an accident there? A. Well, now, you go to an electrician for that.

Q. Do you remember a circumstance which occurred not long ago when a laborer's pick came in contact — broke through and came in contact with the wire? A. Yes.

Q. Would such a circumstance as that produce such an accident? A. I am not an electrical expert. What I profess to be master of I know all about. I have a smattering knowledge of electricity, but not sufficient to go into detail on that.

Q. You said you had heard electrical opinion — whose opinion are you free to speak? A. A man named Kinney, an authority on electricity, so expressed himself to me. He told me that. Then I want to call attention to another thing; although this tunnel four feet wider on the Manhattan side — these new tunnels they are building — than the old tunnels, over in Brooklyn it is not only four feet wider but it is two feet higher. Lo, and behold, in the New York City tunnel they are building on 14th street they have one hole down to the same size of the same tunnel, and still they are going to have all the same cars run through. One of the sections is down that small.

Q. Would that prevent an interchange of cars? A. You have got to get down to the smaller holes, sure. That's perfectly plain.

Q. Does the discretion of the chief engineer exist as to the depth of concrete beneath the structure? A. Absolutely.

Q. He can require it to be more or less? A. More or less; yes. His judgment governs.

Q. (By Senator Thompson.) That's on all these contracts? A. Yes; very plainly.

Q. If you knew how much you were going to require before you bid you could bid better, couldn't you? A. Well, you wouldn't know. That's hardly a fair way to put it, because you wouldn't know in advance until the ground was dug out. If he was a pretty good fellow, he might give me an order to take out four depths, which is sure to be deep enough.

Q. If you knew he was going to do that, you could make a better bid couldn't you — if you knew that before you bid? A. Yes; whereas if he wasn't favorable he would say you take it down to this, and then I will see. Well, that would cost you more than to take the whole business out in the first place.

Q. The idea is that the principal specification is friendship with the engineer? A. Absolutely. I never saw a clearer case of it in my life. And the power that he has reserved for himself, that is delegated to him, is something that should never be in any man's power.

Q. You said yesterday, I think it was, that you had to be favored in order to get a contract. If you are "outside," you couldn't get in on the work. You have been in the contracting business here for some time; I assume you understand the facts here? A. I am not a contractor at all — but I have got a right to be if I want to try it.

Q. Now, how would you got at it to get in here? A. What is the size of your pocketbook?

Q. Well, does that make a difference? A. A good deal.

Q. Well, what has that got to do with it? A. Money counts.

Q. You mean by that you have to put up money in advance? A. Oh, no; I was jesting then. I do not mean to convey the idea that all men are dishonest — even in the city of New York.

Q. If all men were dishonest, we would adjourn the Committee to-morrow. We are proceeding on a different theory. A. A man takes big chances — I can say that. He certainly would have to understand his business and have good fighting qualities to hold his own.

Q. Well, to get at the details of it; how would you go at it to get a contract under the conditions as they are at present, or as they have been for the last three years here? What has a contractor got to do? A. Where the engineer cuts you out is in preparing the plans.

Q. How are you going to overcome it? A. By getting at the head of different city men.

Q. Well, what do you do? Assuming that I am going to get one of these contracts, what have I got to do? What is the best thing to do first to get one of the contracts? A. Oh, you can get one easily.

Q. How? A. Why, go in and put in a bid, and if you are the lowest bidder, they will give you the bid.

Q. But you said something about being on the "inside" or "outside"— you don't give me much information? A. Oh, that's too valuable to give away. There is nothing crooked about it in that way.

Q. Is it a question of friendship, or politics? A. Sometimes it is a question of politics. That is you have to have a friendly entree to the engineer — having such extraordinary powers as he reserves for himself there.

Q. You must have that? A. Yes, to compete with the man that has that.

Q. Well, do you think from what you know of the situation here that if you got a successful contract in the last three years from the Public Service Commission you would have to have a friendship sufficient to have an entree to an engineer, either through yourself or some friend of yours? A. You certainly would.

Q. Well, now, do you think that would cost money, or do you think it is just friendship or hospitality — or what was there about it? A. Well, some things go by favor; others by money.

Q. Well, where would you place your money? A. I wouldn't know just where to place it.

Q. You would have to ask somebody? A. No, no, I wouldn't ask anybody.

Q. Well, what do you mean by that? A. It would be a foolish question to ask of anybody.

Q. Do you think they would come and tell you? A. No.

Q. Well, then, you wouldn't need any money? A. Wouldn't need any money for what?

Q. To get in. A. You can get in without buying your way in — there isn't any question about that.

Q. That would be a question of friendship — to get in? A. Oh, no; you can get in — put up your bond and they will let you in.

Q. Well, then, if you weren't friendly, they would make you follow the specifications precisely and break you? A. Well, you would probably want to get out.

Q. Then, you would have to have the friendship after you got in, is that what it would be? A. Let me put the answer in this way; I wouldn't dare take the risk without being friendly with the engineer, because he has the power if he so wished or was so disposed of his own volition to ruin me, under the terrible powers that are given him under that contract. I would have to protect myself against that if I put up my money. Very often it has been the case in my own life, when in my younger days, when a contractor has got everything to win and nothing to lose, he can go in there then and take chances. But if he has got anything to lose, he is going to hesitate.

Q. Well, I have talked with contractors and they say that they would rather have — that it would be better business to have everything done on the square and in the open and have everyone take his chances. A. That's right.

Q. They seem to feel that way; and still they seem to feel as you indicate that you feel, but just don't like to tell details about it. Now what can we do as a committee; what can we do as a legislature, to overcome this condition and remedy conditions so that you will have a better taste in your mouth when we get through this thing, in being a contractor — that's what I would like to know. I would like to know if you can let us know what the details are. It will be much easier then to report a remedy. A. I suggested a remedy in black and white here. Let me read it to you. I state here on page 49:

> "The preparation of plans for New York City's work gives such good opportunity for graft that there is nobody more directly interested as to whom is appointed engineer than those who rule, live and are benefitted from graft, and as the engineer more often secures his position through influence than from his ability, it is not surprising to find occasionally the position occupied by an engineer who knows how and boldly fixes things to suit his friends, and is delighted to hear the officials over him, when shirking responsibility, say, "we must be governed by our engineers," thereby stopping any investigation of incompetency, etc.
>
> "There is no doubt that the amount of money squandered every year by the city of New York through its contracts is

so large that it makes the graft collected from all other sources appear insignificant.

"While I write I read what a former commissioner of one of the city departments writes:

"Why not stop the evil?

"Because grafting and blackmailing has become a systematic, scientific business absolutely defying detection and conviction save in rarest instances."

"Too true, not only of his department, but others. What becomes of the money the city of New York squanders in its contracts? If you attempt to point it out you are looked upon as an intruder and treated accordingly, and put off with the remark, "we must be governed by our engineers."

"The remedy is to remove the temptation by providing a proper check on the plans, specifications and contracts, thus taking from those who have the pull, the opportunity to do these things, which can be effectually done by providing, that before bids are asked for any work, the contract, specifications and plans must be advertised and public criticism on them invited. To send such criticism to the engineer or the department officials who prepared them would be only a waste of time, as was shown in this matter. A committee of taxpayers, selected as are struck-jurymen, should do the advertising and receive the criticisms.

"It will be remembered that in the preparation of the plans for the original rapid transit subway that before the commissioners finally adopted the plans on which the subway was built they published several times the tentative plans as changes were made in them, with the result that the plans finally adopted produced as much subway for $35,000,000 as the city now gets for $70,000,000.

"No doubt the majority of the people of the city of New York will be disappointed when they learn that the high-priced subways now being built will be inferior in many ways to the old subway, one of the many illustrations of this that can be given is:

"Instead of making the subway structure for the two express tracks on Lexington avenue of sufficient strength to

keep out the seepage water, as was done in all parts of the old subway, the plans provide that the seepage will be carried in pipes to sewers built about eighteen inches under the track with hand holes in them every fifty feet; hence leakage from the sewers, and the sewage matter from the surface that does no get into the sewers near the surface, will find its way to those in the subway — this is incredible — but see for yourself in Fig. 35."

I want to say that in building the Pennsylvania Railroad through 33rd street, that in order to economize the construction there, they put in wedges and similar plans of this kind. Here one morning last summer I went out there and there was ten feet of the street had dropped right down. These little defects continually little by little, come in there, and finally a hole comes in there, and by and by you won't know where it is going down.

Senator Thompson.— I want to say that subpœnas have been issued to T. H. Gillespie and T. A. Gillespie for next Tuesday morning. Both have agreed, through their attorneys, to be present at that time.

Testimony of Mr. CHAS F. WOOD; examination by Senator Thompson. (Witness is sworn.)

Q. What is your employment? A. Public Service Commission inspector.

Q. Where are you located? A. South Ferry.

Q. And where is your office? A. No. 2 Stone street.

Q. That is down by South Ferry, on this side? A. Right in front of the custom house — it runs east from the custom house.

Q. And how many inspectors do you have there? A. Well, I am on during the day, and there is another man that comes on at night; then there is a man that comes on later.

Q. There are three of you there on that work — and that's all the Public Service representatives there on the work of digging the tunnel under the river, from this end? A. That's all.

Q. Who else do you have? A. There is an engineer there on the job. He has a field force of about fourteen men.

Q. Where is he? A. No. 2 Stone street.

Q. Where does he go? A. We find him anywhere from Morris street on down.

Q. That's Morris street in Brooklyn? A. No, sir, Morris street, New York. What we term the Morris street cut between Morris street and —

Q. Well, what were his duties — what was his business — what does he do? A. Mr. Windsor is the section engineer. He is in charge of the construction work in that section.

Q. He is in charge — but what does he do? A. Well, he supervises it.

Q. In what way? He must tell somebody what to do. Who does he tell? A. He tells me and the inspectors and masons what to do.

Q. Who else? A. He tells the field engineers.

Q. Now, what does he tell you to do? A. I am to look after the construction in general of the subways, placing of concrete, timbering, excavation of tunnels, water-proofing — whatever there may be.

Q. Well, does he give you any specific instruction? A. Our guidance is a book of specifications and plans.

Q. Oh, you have a book of specifications. Does he ever say anything about it except to tell you to read the book? A. Oh, yes. We get instructions from our superiors from time to time.

Q. Are you an engineer? A. Somewhat, yes.

Q. Have you ever been to school and graduated? A. Not from a technical school.

Q. You are just an inspector of masonry? A. Yes, sir.

Q. Well, now, you say you look after the placing of concrete? A. Yes, sir, mixing and placing.

Q. Do you have to go down into the tunnel for that? A. Yes, sir, in the morning and come out at night.

Q. Practically all the time? A. Yes.

Q. They mix the concrete on top? A. No, we mix it down in the tunnel.

Q. What is that pile of gravel that I saw down there the other night. There were some fellows there shoveling it into a box and then they would turn it up and it would run down a trough. What do you call that? A. Where did you see that?

Q. Down at South Ferry. A. Oh, the mixing on top there. They just started to tunnel there — they have a mixer on top.

Q. That mixer, then, is on top? A. That one is.

Q. But you never get a chance to go over there? A. No, I haven't gone over.

Q. Don't anybody else? A. Well, they have been doing that mostly at night.

Q. Does the night man go down? What are you supposed to do when you do go down? A. Well, we see that our proportions — our mixture — is right. See that we get the right mixture, the proper amount of water, etc. We also see that the concrete when it is poured in the forms is well spaded so that it will make a tight job.

Q. Now, what do I understand, that you have ever gone to this mixing place — this particular place I call attention to? A. Oh, sure.

Q. Now, what is the proper mixture? A. One, two, four.

Q. That's one part, cement two parts sand and four parts gravel? A. Yes, sir.

Q. You see that that is done? A. Well, the gravel is mixed at the bank, so we have a gauge on this hopper — a measurement stick — and the laborers, foreman, rather, is instructed to bring his aggregate up to this certain point, then the cement is dumped in and then the whole is dumped into the mixer — the proper amount of water is then added.

Q. What is the proper amount of water? A. Well, to get a good consistent mix, about plastic concrete — nothing wet nor dry.

Q. So you tell the foreman what to do? A. We show the foreman just how we want it, and then we have a mark on this hopper.

Q. And then you go away and leave it? A. Oh, no. We go down into the tunnel, and then we come back up again and watch the mixer.

Q. And you let them shovel in that sand and gravel? A. They shovel in the proper amount.

Q. It doesn't matter whether they get sand, or rocks — they can put in anything? A. The mix must be good.

Q. Do you think it is a good mix when it is all sand in some cases and all stones in others? A. You have got to have the proper amount of sand and stone.

Q. It is unloaded there from a boat and a big pile is made. On the top of the pile it is all sand and at the bottom all stone. A. They don't shovel it in that way.

Q. Are you sure of that? A. Yes.

Q. How do you know? A. Because I have inspected it myself, and I know.

Q. How much time did you put in inspecting that pile down there last Monday night? A. I didn't inspect that.

Q. So you don't know whether that was shoveled in that way or not? A. Not down there, no.

Q. Well, that is the only spot where you were mixing concrete to use in your construction from this side of the river, wasn't it? A. That's not under the river.

Q. Aren't they digging a tunnel under the river down there? A. No.

Q. Well, you haven't gotten out under the water there. Don't you want good concrete unless you are under the water? A. Oh, yes.

Q. Aren't you interested in having that concrete just as the specifications call for? A. We want the best — and we are getting good concrete.

Q. Do you think you are? A. I know we are.

Q. Now, if you shovel in all sand up to a particular point, then you put in little stones, and then you dump in some cement — when you do that, do you think you are getting good concrete? A. Certainly not. If that comes on the job, it is dumped — it is thrown out.

Q. You think it is? A. I know it is.

Q. Have you seen that job since last Monday night? A. Oh, yes.

Q. Were you there Monday? A. I was down where they were building the forms Monday. They started at five o'clock Monday night.

Q. Well, now, if you were told that while you weren't there they were shoveling it in according to the convenience of the shovel men and putting in the small stuff in one load and the big stuff in another and not mixing it again, you would think you had better have an inspector there all the time, wouldn't you? A. If that

keeps up. But when we find a bad mix coming down into the tunnel, why we go right up and see that we get the right proportions.

Q. Well, I am going to tell you that last Monday night, that's exactly what they were doing at that particular point. I can give you that information officially, because I saw it myself last Monday night, and there wasn't any inspector or Public Service employee there. I am giving you the information because that's exactly what they were doing. A. Of course, I don't know anything about the night work.

Q. Well, I am giving you the information now. How do you store the cement? A. The cement is supposed to be stored in a waterproof shed on a platform away from all moisture.

Q. Is it your duty to see that it is? A. Yes, sir.

Q. Well, why do you allow them to store this cement out on the dock? A. I don't have any jurisdiction over that particular point.

Q. Whose jurisdiction does that place come under? A. That comes under another section.

Q. Who is the engineer? A. A man by the name of Holland, I think.

Q. You are familiar, then, with that pile of cement? A. I know that there has been a pile of cement there.

Q. It was stored entirely contrary to the requirements of the agreement, wasn't it? A. I think where the cement is stored is a perfectly proper place.

Q. Do you think that the air doesn't have anything to do with effecting the cement — the moisture from the air? A. Well, of course, you can get moist air anywhere you put it.

Q. Is it good for the cement to have the moist air come in contact with it? A. No, sir.

Q. Then, when it sets, is shouldn't be used, should it? A. If it had set, you couldn't get the cement out of the bag.

Q. When it becomes hard so that you could hit it with this gavel and not make a dent in it, could it be used then? A. Not if it was too hard.

Q. Do you know that there were several bags in that pile that were set that way? A. I didn't.

Q. Did you look to see? A. I did not.

Q. If there were, it would be contrary to the terms of the contract to use them, wouldn't it? A. If we were aware of the fact, the whole batch would be condemned.

Q. Well, you could find out very easily by going and knocking it. It wouldn't take over five minutes in a day. Where were they getting this cement? A. I couldn't tell you.

Q. Weren't they getting it from that same pile that I told you about? A. I don't know.

Q. Seeing that cement is always used is part of your duty, isn't it? A. We don't care exactly, as long as the concrete is all right.

Q. You haven't looked, then, to see if it was of the right sort before it was put into the concrete? A. Cement flows out of the bag in a floury condition when it is all right. That's as far as I know.

Q. Did you know that we were down there Monday night? Did anybody tell you that? A. No.

Q. You may report to your engineer that that's the way that mixing was being done Monday night.

Testimony of Mr. JOHN SHEA.

Q. (By Mr. Smith.) Do you operate the night checker's books, as well? A. I post the time from his check book into my regular time book.

Q. And your first duty is to mark the number of men that go down, by their numbers? A. By their numbers; yes, sir.

Q. And do you do that in the smaller book? A. No; I do that on a pad and check the check book the following morning.

Q. Which one furnishes the information, yours or his? A. For the night shift, his furnishes the information.

Q. And yours furnishes the information from eight to four o'clock? A. Yes, sir.

Q. Does his book show any overtime? A. Yes, sir.

Q. How far back does that go? A. Back to May, and up to to-day.

Q. Have you any other of those night checker's books? A. No, sir.

Q. And those are destroyed, so that the only permanent books that you have are the smaller books? A. These time books.

Q. And you have those back behind that first? A. Yes, sir.

Q. Do you keep those back behind pay day? A. After pay day I usually turn them in to the main office. They still are maintained in the main office as a matter of record.

Q. Does that night check book show any overtime? A. Yes, sir.

Q. How much? A. It shows on Monday night that the four to twelve shift that went down at four o'clock worked four hours overtime — that is, about ten of those men.

Q. Wasn't that in your memory the last time you testified? A. No, sir.

Q. What is the next item of overtime? A. The following morning there was one man who worked from twelve until ten — that was two hours overtime — and one man in the concrete gang worked a double shift — that is, four to twelve and twelve to eight. There were two day men from eight to four, worked from four to twelve, and there was one elevator runner who worked yesterday morning. He worked from four to twelve and also on the twelve to eight shift, because the twelve to eight man didn't come on. That's the only overtime that's here.

Q. What is the plate on the outside of that checker's book? A. That's South Ferry.

Q. And where is shaft No. 4? A. That's the power house and machine shop.

Q. Does that show any overtime during the same period? A. No, sir.

Q. Then, it was on Monday night that the four to twelve gang to the extent of ten, worked the double shift? A. Yes, sir.

Q. (By Mr. Moss.) Were they paid for extra time? A. Yes, sir. I was going to say the only reason for that that I know of, was that they were concreting an arch and it broke down and they held that gang there to see whether they would need them or not.

Q. (By Mr. Smith.) Do you know anything about that, as a matter of personal knowledge? Who gave you that information? A. Mr. O'Rourke.

Mr. Moss.— Mr. O'Rourke is here, and has just made a statement to me which I think we ought to take on record.

Mr. John F. O'Rourke.— It was reported to me at the time that one of the pipes, a bent in the pipe, wore out where they were making a repair to that pipe, a serious thing, that they kept the men waiting and paid them until they made the repair and finished the arch they were working on.

Q. (By Senator Thompson to Mr. O'Rourke.) The Public Service Commission inspector there on the job understood that, did they?

Mr. O'Rourke.— I think so. I should not recognize the job without at least one Public Service Commissioner on the place. I never saw jobs so well watched and so little fault found.

Mr. Moss.— What about the ten men that I think were held?

Mr. O'Rourke.— They were kept there for an emergency.

Senator Thompson.— Was a report made of it through the Public Service Commission?

Mr. O'Rourke.— That I couldn't tell you. I could not tell you anything about the reports.

Senator Thompson.— Of course, the emergency required overtime work, and you can't work them except in case of an emergency under the law. Wouldn't it be pretty necessary to report that to the Public Service Commission, so that they would understand the situation?

Mr. O'Rourke.— I shouldn't think so. It was of no importance to anybody but the men who worked there and to the contractors.

Senator Thompson.— Wouldn't it be likely to invalidate your contract?

Mr. O'Rourke.— I don't see how.

Senator Thompson.— You are sure about that? You not only invalidated your contract, but didn't it invalidate your bond that went with it?

Mr. O'Rourke.— Well, as to that, I only know that to invalidate contracts for trifle points like that would not be proper.

Senator Thompson.— Well, could you hardly say it was a "trifle" matter, when the Court of Appeals takes cognizance of it? If you are indiscriminately violating these required conditions in your contract and therefore in validating your bonds, the City of New York is running a lot of risk in this very matter.

Mr. O'Rourke.— I wish to say, and I can say it with all sincerity, that it is not our purpose to work a man a minute overtime, over eight hours, but if occasion arises through some emergency that he has to work longer than that, the City of New York would be a sufferer as much as we would, not to have him do the overtime work.

Senator Thompson.— That's true.

Mr. O'Rourke.— And I don't think there is a single case in our work where men are worked continuously or habitually more time than the law allows. The theory of the eight-hour law is that if you work a man eight hours he will do as much work as if you work him ten.

Senator Thompson.— Do you believe that?

Mr. O'Rourke.— I do. It may not be true of one day or two days, but in the general run it is true. It is a fact that if they work only eight hours, they are twenty-five per cent more efficient.

Senator Thompson.— Then, you don't do this except in emergencies?

Mr. O'Rourke.— Only in emergencies.

Senator Thompson.— But you don't make it a practice to notify the Public Service Commission of these emergencies?

Mr. O'Rourke.— I couldn't tell you of that.

Senator Thompson.— You don't know of any such practice?

Mr. O'Rourke.— Their inspectors are always there.

Senator Thompson.— But do you know of any such practice on the part of your men to notify the Public Service Commission of these emergencies?

Mr. O'Rourke.—I do not.

Senator Thompson.— I would like to go down and see that sand pit that Mr. Craven was telling me about.

Mr. O'Rourke.— They are not pits, they are bins. They have all these bins, and they mix the concrete so accurately that the Public Service Commission inspectors go there and take samples which are taken to their laboratories and put through the different screens and dissolved into the different parts and found to be mixed all right.

Testimony of LAWRENCE J. CULLEN; examination by Senator Thompson. (Witness is sworn.)

Q. What is your occupation? A. I am general inspector.

Q. Where are you located? A. At station No. 18.

Q. Where is that? A. South street, north to Washington street.

Q. South Ferry? A. Yes, sir.

Q. That's where they got a shaft down in the ground ninety-four feet and are starting to build a tunnel under the river. How far out in the river are they? A. We don't go into the river at all. We are from South street north.

Q. Who goes out into the river? A. They are the engineers. There are no inspectors on that work.

Q. Well, where does that concrete go that they mix? A. That goes up north of South street.

Q. And what do you do in reference to inspecting that? A. Why, I see that the sand and gravel is properly mixed.

Q. What do you do to see that the sand and gravel is properly mixed? A. Why, I go up there and see that they mix the stone with the sand properly.

Q. Do they mix it right there at the entrance to the shaft? A. It is already mixed at the gravel pile, about two or three hundred feet north. It comes there already mixed.

Q. Then what do they mix it there for? A. Sometimes there is an inspector there and they mix it.

Q. How much time during the day do you trust to their honesty? A. On the day shift?

Q. Yes. A. From four to five — every opportunity I get I am there. I am usually there about every half an hour.

Q. Where were you last Monday night? A. I was inspecting that arch there — inspecting the concrete that was going into that arch.

Q. Where were you located? A. Down at the bottom.

Q. Oh, you were down there? How long were you down there? A. I may have been down there for an hour at that time. I had to stay down there.

Q. Do you know the policeman there? A. I do not.

Q. Did you ever see a policeman there? A. Yes, sir, several of them.

Q. Did they ever see you? A. Yes, sir, but they might not know me, because I never carry a badge.

Q. Do you think any mortar was being mixed last Monday night at the top of that shaft? A. Yes, sir, I do.

Q. How would they go at it? Just tell me, so that I can find out. You see, I was down there, and I would like to know what they were doing — then maybe I would find out something. A. Well, they dump a load of gravel there. Sometimes the large gravel falls beside and they throw it under and mix it up with it.

Q. If they don't do that — why, then, they don't mix it; is that right? A. No, sir, they don't.

Q. Well, then, if they didn't do that, there might be some large gravel that would make bad concrete? A. Yes, if they put the large gravel in without mixing it.

Q. Or if you put the small sand in without the gravel? A. Yes, sir. You have got to have a proper mix.

Q. You should have all the while two parts of sand and four parts of gravel and one part of cement, and you say you were there once in every half hour? A. No, sir, I would not say that for sure. I never timed myself.

Q. Now, as a matter of fact, were you there at all last Monday evening at the place where the mixer was standing and where

that gravel was — were you there all the time from six o'clock until midnight? A. Yes, sir.

Q. How much time were you there — how often? A. I couldn't say, but I was there.

Q. How many times? A. I couldn't say.

Q. Were you there once? A. Oh, yes, many a time — a dozen times during that evening.

Q. And all that time was there any measuring that you know of being done — to see that exactly one part of cement, two parts of sand and four parts of gravel went into that mixture? A. Well, I couldn't tell that.

Q. Of course you couldn't — and there never has been a time that you could tell, has there? A. Unless I was there to measure it.

Q. There is nothing there to measure it with. A. Yes, they have marks on the hopper.

Q. How can you tell whether there are two parts of gravel or one of gravel by that mark — that sand and gravel is supposed to be properly mixed? You can't tell that, can you? A. No, I can't.

Q. Of course you can't. The sand and gravel is supposed to be mixed when it reaches you. It comes mixed, and you can't tell. The only thing you can do is to put that supposedly proper mixture up to a mark in the hopper, and then in every hopper dump in a bag of cement — that's true, isn't it? A. Yes, sir.

Q. And that's all you know about the mixture? A. Yes, sir.

Q. Have you reported that to Mr. Craven? A. No, sir.

Q. Have you reported it to your superior? A. They know it — they understand those conditions.

Q. Does the whole engineering force know it? A. As far as my superiors are concerned — they know it.

Q. So it isn't necessary for you to report? A. No, sir.

Q. Now, there is some cement down there — do you have charge of that? A. Yes, sir.

Q. What is your duty in reference to cement, in regard to keeping it in storage properly, etc.? A. Why, seeing that it is kept in a dry place.

Q. Do you know about that pile of cement on the dock there? A. Yes, I have seen that.

Q. Did you regard that as kept in a dry place? A. I have never seen any water in it.

Q. Don't you know that the air there is very heavily laden with moisture? A. But they generally keep it covered with a piece of canvas.

Q. If there is no canvas, then it is subject to the air? A. It is, to a certain extent.

Q. When did you inspect that pile of cement last? A. On Monday night.

Q. You were over there Monday night? A. Yes, sir.

Q. How did you inspect it? A. I saw what they were taking out was good.

Q. You saw what was being taken out was good? A. Yes, sir.

Q. How did you examine that that they were taking out? A. Well, I opened a bag.

Q. You opened a bag and looked at it? A. Yes, sir.

Q. Did you know that you could find out whether it was floury or not by taking a stick and hitting the bag? Did you try that? A. I used the heel of my shoe.

Q. Did you do that? A. Yes, sir.

Q. How many bags did you hit with the heel of your shoe? A. About seven or eight.

Q. And found they were all right? A. Yes, sir.

Q. Would you be interested to know that I found fifteen or twenty that were so hard that you couldn't indent them with that mallet? A. They never used that.

Q. How do you know that? A. The only reason I know is because if those lumps come down with the concrete you notice them.

Q. But, if you are not there, you don't see them, do you? A. We see all the concrete that comes down.

Q. Now, where was the pile of these bags? A. They were piled one on top of the other.

Q. I know, but you say they threw these aside when the cement was hardened? A. I haven't seen any at all.

Q. You haven't found any that they took out of that pile that were so hard that they threw them aside? A. I have, at times.

Q. Have you lately? A. No.

Q. There must be some down there that have been thrown aside, aren't there? A. I don't know.

Q. Don't you know that they went through that pile and took all the sacks that were hardened out last Monday night? A. No, sir, I didn't.

Q. Well, then, you haven't gone over the piles since Monday night to kick the sacks with your heel and see if the cement was soft or hard, have you? A. No, sir, I haven't.

Q. But you did Monday night, and you didn't find any hard ones? A. Yes, sir.

Q. And you know the pile I mean is down on the dock near the works? A. Yes, sir.

Q. Do you think that's a good place to keep it? A. Well, yes — it is kept covered.

Q. Well, you know the way it was kept there Monday night. If it is not covered, it hardens, and is no good; isn't that so? A. If it is kept in the open air, uncovered, it hardens, yes, sir.

Q. Well, that's the way it was. They have to keep the cover on it all the time, don't they? A. When they are using it they don't have to.

Q. Well, they are using it all the while, aren't they — every day and every night, Sundays and every other day? A. I don't know about that.

Q. You don't know? A. We do very little concrete work down where I am.

Q. I was talking to you about that pile of cement, and you are the inspector there — and every night, as I understand you? A. Yes.

Q. And you don't know how often they expose the concrete? A. Well, I examined it. There are other inspectors there that have been using it.

Q. What other ones? A. Junior engineers — junior assistants.

Q. Where do they mix the concrete that goes in there? A. I don't know. They might have one of the mixers down on the job.

Q. I am awfully sorry you can't give me more information about it. We couldn't find you when we were down there Monday night. A. One of your men found me. I was in the hole on a concrete form, and he came in, and the superintendent came in and got me. This gentleman (refers to Mr. Moss), I believe, was one of the gentlemen that was there.

Mr. Moss.— I don't remember seeing you. A. And another gentleman with a dark moustache. I didn't have the time then to take you through, and I told the gentleman that if you went through you would have to take the chance of spoiling your clothes. On any other night I would have taken the gentlemen around.

Q. Well, you think that everything Monday night was going along very properly and getting along all right — the cement was mixed properly, and the cement was in storage at the right place, etc.? A. Why, yes, I think it was pretty good.

Q. You didn't make any reports to anybody that there was anything different than the contract specified? A. Nothing out of the ordinary, no. May I ask a question, Senator Thompson?

Q. I suppose so; yes. A. At the time I was mixing that concrete there, when you gentlemen were there, you could have gotten a cigar box full of the concrete and made a test with it.

Q. We did. A. I am almost sure you found it satisfactory We have very satisfactory tests.

Q. Do you think that's a good way to do — to mix the sand and gravel at the pit and run it through that way? A. What do you mean?

Q. The sand and gravel is mixed at the sand pit, isn't it? A. Yes, sir.

Q. Do you think that's a good way? A. We have found it a very good way so far.

Q. It suits you after it has set down in the tunnel? A. That's the only way you can test it.

Q. The question occurs whether that sand and gravel was properly mixed at the sand pit? A. Now, we have our engineer here, who has charge of the inspectors, who will testify that the mixture is properly inspected at the sand pit before it is brought to the job.

Q. But, don't you know, it becomes unmixed, or separated, when you load it on the dock? A. Well, it is properly mixed.

Q. I understand that it is mixed when you load it, but when it is unloaded it is unmixed.

Assemblyman Feinberg.— Listening to you, I gained a certain impression. Are you the only inspector on that job? A. Nighttime; yes, sir.

Assemblyman Feinberg.— Do other duties take up so much of your time that you have got to trust some of the inspection work to others? A. Possibly once every two weeks that occurs.

Senator Thompson.— Now, you can handle that so that those fellows will be honest on top while you are down underneath? You think that's all right? A. Yes, sir. As a general rule I have found that they do all right.

Q. Are you an engineer? A. No, sir.

Q. Did you ever graduate? A. No, sir, not from an engineering college.

Q. Were you ever educated in the making of concrete — did you ever have any experience? A. I contracted in masonry fifteen years.

Q. Who hired you? A. Fink. I took the civil service examination and got through on the theory of mixing and making and using concrete. I had other things besides that.

Q. (By Mr. Smith.) How long does it take you to get from the heading up to the surface? A. That all depends. If a car is down, it will take about seven or eight minutes.

Q. Suppose somebody on top wanted the inspector — they don't know when to expect him up above, do they? A. They don't know when he is coming up.

Q. (By Senator Thompson.) Did you ever call them down for not mixing the concrete properly? A. Yes, sir.

Q. When was the last time? A. Several weeks ago. Mixing that gravel is the only trouble I find.

Q. (By Mr. Smith.) So that you do find that it separates, as a matter of fact, so that it requires some treatment when it comes

to the work? A. It stands to reason that the large stones don't remain on top.

Senator Thompson.— Well, for your information, so that you can tell them, we were down there Monday night, and they weren't mixing it at all. It was separated, but the workmen were shoveling it into the hopper just as it came in, without mixing it at all. Also the pile of cement down there had a number of bags, at least twenty of which we hit with a club, and found that the cement was set. And we didn't see any pile where they were laying it aside. We didn't find you, and we asked a policeamn about you, and he said that he wouldn't know a Public Service inspector if he saw one — he said that he saw them so seldom. A. That man that you saw was a stranger, and he was only there during the strike, and the inspector doesn't go around carrying his badge.

Senator Thompson.— Well, that was only for your information. A. Well, I would like to make the statement that you people did find me there Monday night. This gentleman (refers to Mr. Moss) was one of the gentlemen in the hole. I am almost sure this is one of the gentlemen.

Mr. Moss.— Mr. Lucas, tell how this is mixed up — will you, please?

Mr. Lucas.— It is mixed just off Northport. The sand and gravel is mixed very carefully, under the supervision of one of my inspectors at that plant. He tests every boatload that leaves the dock for the Public Service Commission's work. Unless the boat has his ticket of inspection, it can not land at the dock here. I say it cannot land at the dock — the workmen will not permit any sand or stone or gravel to land at the contractor's dock unless it has such a ticket of inspection. The Henry Steers plant is so arranged that the various sizes of sand and gravel are graded in bins — carefully and accurately graded — and we make numerous tests. They are stored in bins, and these bins lead through shoots to a belt underneath, and these shoots are regulated by our inspector, so that the various proportions of the different size sand and the different size gravel, varying from the sand right up to

the inch and a half gravel, are deposited on that belt in the right proportion. He takes one-hundred-pound samples from time to time from that belt before it is loaded in the boat and carefully analyzes it with his screens and apparatus.

Q. (By Mr. Moss.) Where does it go after it has been mixed? A. On a boat.

Q. Does it go from the belt to the boat? A. It goes from the belt down a chute into the boat. We had them rebuild that plant.

Q. So the mixture is shot into the boat? A. Not quite that way. It is deposited carefully on the boat, little by little, so that there is no segregation and no separation.

Q. Now, we will assume that that is done. How is the sand got from the boat to the dock in New York? A. The sand is lifted in buckets. There is a bucket for picking it up in lots and then depositing it carefully in a pile, and the instructions to the engineers are that those bucket-loads shall be dropped around at different parts of the pile, and not always dropped at one place, and the pile is built up in that way.

Q. Now, you have piles established upon the dock at New York lifted from the boat by shovels. How is it got from the pile to the place where it is to be used? A. That isn't under my supervision.

Q. Well, you know about it. A. I couldn't say — I couldn't be sure of that.

Q. Well, don't you know? A. Maybe they brought it in wheelbarrows.

Q. Do you know whether or not laborers climb up on the pile and throw shovels full from it into the wagons? A. No, sir, I don't know anything about that.

Q. Well, that's what they were doing Monday night. A. I will take your word for it.

Q. There was a tall pile, a high pile, of sand and gravel mixed on the dock, East river side, somewhat north of the Battery; there was a large truck standing there, and three workmen were at the top of this pile of mixture and were throwing it by shovelsful into this wagon. A. That would be all right.

Q. And they would have to throw some distance. A. That would mix it up pretty well, sir. And we didn't permit this material to be unloaded unless it had been properly inspected — unless numerous tests, and very careful tests, had been made before it was loaded onto the boat.

Q. How many inspectors, Mr. Lucas, are there under you who work outside of the city of New York? A. I couldn't tell you offhand — they vary. There may be six or seven up to a large number. As the work slackens up, I lay them off. Then at other times, I put them on again.

Q. What is their compensation? A. The compensation varies. Expert lumber inspectors get $4 a day. Steel experts get as high as $150 a month. Some inspectors may get as high as $150 a month. Then we employ chemists from time to time. The compensation varies, owing to the character of the work.

Q. What do you allow the for expenses? A. Simply allow them the traveling expenses and maintenance when they are away from the home stations.

Q. Traveling expenses from New York? A. From wherever they may be, at Pittsburg, New Orleans, Allentown and other various central stations.

Q. Do all the inspectors receive expenses — all the out-of-town inspectors? A. When they travel.

Q. Well, you have got a number of inspectors in Pennsylvania — do they all receive expenses? A. When they travel.

Q. Well, what do you mean when they travel? A. If the inspector's home station is Pittsburg, and I send him to Chicago, we pay his traveling expenses back and forth and maintenance.

Q. Well, you have got thirty or forty inspectors scattered through Pennsylvania — don't they all live in Pennsylvania? A. They live in various parts of Pennsylvania, yes. I wouldn't say there were thirty or forty in Pennsylvania. I think there are not quite that many.

Q. What is the average expense allowance per month? A. There is no average expense account. It may vary from $2 to $150.

Q. Do you allow many of them more than $100 a month? A. There is no question of allowance, sir; the allowance depends upon the work and where they are sent.

Q. (By Mr. Klein.) Now, isn't it true, Mr. Lucas, that there are many inspectors in Pennsylvania who live in towns, where they work, to whom you allow an average of $100 a month expenses? A. In the towns?

Q. Who live in the towns where they work or within a few miles of the town? A. Nothing like that in our business.

Q. Do you know of any of those inspectors drawing salaries from the firms where they inspect? A. I know that they don't.

Q. You are positive of that? A. I sure am.

Q. You have made inquiry to that extent? A. I keep pretty close to them. I know where they go nights. I have watched them very carefully. I have fired many a man that wasn't quite regular in his habits.

Q. You are sure that they are not on the pay rolls of the firm where they are working? A. Well, of course, it is possible that there might be a case of that kind, but it is not probable.

Q. Isn't it true that many of those inspectors are recommended by the firms where they are employed on behalf of the city? A. I wouldn't take any firm's recommendations for inspectors. The Public Service Commission asks for recommendations and sometimes they refer to firms for whom they have worked. They may take an inspector from a steel plant who may have passed the civil service examination — if the Civil Service Commission is satisfied and appoints them, we can't help that. But I watch very carefully to see that their former allegiance doesn't affect their ability.

Assemblyman Feinberg.— How do you do that? A. I have an excellent method. If I find a man has been appointed that was a foreman for some firm in Brooklyn formerly, I shift him out in Pennsylvania somewhere.

Q. (By Mr. Klein.) Well, you won't say, Mr. Lucas, that many of those inspectors that you have, are not working on behalf of the city at plants where they were formerly employed? A. Now, let me get that straight.

Q. You wouldn't say that there are many of your inspectors who are working on behalf of the city at plants where they were

formerly employed in private capacity with those plants? A. I will say there are not many inspectors employed now where they came from originally — not within a reasonably long period. Of course, if they were employed there five or six years that may be true. I may have put them back at that plant.

Q. And you say you don't allow expenses to inspectors who do their inspecting in the towns where they live, or near there? A. Unless they have to take a car. He may have to buy his lunch outside — in another city.

Q. You allow those expenses? A. Well, yes, of course.

Q. Do you allow those expenses in the city? A. No. Understand me — that if an inspector stationed in Pittsburg has work at a plant in Pittsburg, I wouldn't allow him his lunch; but if I sent him to Ohio, to Youngstown, for instance, or within thirty or forty miles, and he had to get his lunch while out of the city, we would allow him his lunch.

Mr. Smith.— Mr. O'Rourke wanted it put on the record as a matter of fairness a statement of his engineer, who is here, that it is customary to report emergency work to the Public Service Commission engineer whenever any overtime work is done.

Assemblyman Feinberg.— Do you make an investigation as to whether the inspectors assigned to any particular part of the work have worked there before? A. Yes, sir.

Assemblyman Feinberg.— Well, have you taken any steps to investigate whether they are on the pay roll of the concerns whose work they are inspecting? A. Well, I have a man in charge at various distances who watches that very carefully. He knows where every man lives. He reports to me from time to time what the man's habits are, etc. He also reports to me if he borrows money, and what his reputation is. If I find he is going out nights with the men he is working for, he does not last long with us.

Q. (By Mr. Klein.) Well have you found such? A. I had one suspicious case. I had an inspector that I thought was unduly familiar with employees, but there was no evidence that he was in collusion with them — but I transferred him to another plant about ninety miles away.

Q. Have you any method of checking up the inspectors' work? A. I go around regularly to all the plants where we have inspectors located and check up the work they are doing, and I have inspectors in charge of various districts who are continually watching the men under them.

Q. And all the material is inspected? A. Absolutely.

Adjourned until May 5th at 11 A. M.

MAY 5, 1916

Committee met pursuant to adjournment. Called to order by Chairman.

Adjourned until May 6th at 11 A. M.

MAY 6, 1916

Committee met pursuant to adjournement. Called to order by Chairman.

Adjourned until May 9th at 11 A. M.

MAY 9, 1916

MUNICIPAL BUILDING, NEW YORK CITY.

Meeting called to order by Senator Thompson.

Mr. Moss.— I will call Mr. Untermyer to the stand.

Testimony of Mr. SAMUEL UNTERMYER.

Mr. Untermyer is sworn and takes the stand.

Q. (Mr. Moss.) Mr. Untermyer, you are a member of the firm of — A. Yes, I am associated with the firm.

Q. Yes. I thought you were associated as a director — as a member of the firm. A. Well, a few years ago, wanting a little

more leisure, I made a somewhat different arrangement, by which I am still associated with the firm, and my two sons are partners in the firm.

Q. Yes. I want to ask you about the Longacre Electric Light and Power Company. You had some connection with that company in a professional way a few years ago, didn't you? A. Yes.

Q. Was your firm retained by that company? A. My recollection is that the people who controlled the company retained my firm. I don't think that we acted directly for the company.

Q. Who retained your firm? A. There are a number of gentlemen who controlled the situation; Mr. Melville, I think, and Mr. Oakley —

Q. Joseph H. Oakley? A. Yes; and others. The whole subject is a little hazy in my mind at the moment. It is some years since we have had anything to do with that business. We have been disassociated with it for, I should say, at least three years.

Q. Yes. And I realize you haven't had time since the subpoena was served upon you. A. The subpoena was served on me yesterday. I had just returned from a two weeks' journey in South America, and we have just moved our offices into the Equitable building, and our papers are in some disorder. I didn't know on what subject you wanted to examine me, or I should have prepared myself.

Q. Yes. What was the object of this company? I will make a start, Mr. Untermyer, and take it up with you from the first to the last. A. Yes. The company was organized many years ago for the purpose of supplying electric current in the city of New York. It obtained a charter, and, I believe, it started in business with a small power house or some other way of securing current; I believe it was with this power house. It is claimed by the Edison Company later on that its charter had lapsed. It went through many years of the most bitter litigation. The question of the validity of its charter and whether it had lapsed, and various other complicated legal questions, went through the courts to the Court of Appeals a number of times.

Q. And its opponent was the Edison Company, wasn't it? A. Its opponent at times was the Edison Company in the open. I think its opponent at all times was really the Edison Company,

but in the latter phases of the litigation, if I correctly recall the facts, the Edison Company appeared in the open as its opponent. And, I think, it still has quite a plant in a certain part of the city from which it supplies current. It did supply some current at the time I acted for it, and it had what I regarded as one of the most valuable franchises ever granted in the state. But it never seemed to be able to operate it, because it had nothing but litigation. When it sought to extend its lines, another litigation was started against it. First the public authorities would not give the permits to open the streets.

Mr. Moss.— Yes.

Mr. Untermyer.— It had to litigate to get that authority. Then it had to litigate further to get its pipes down. Then it had to litigate, as I remember the facts, over the validity of its charter. But I want to say right here, as I said at the beginning, that it will be necessary for me to consult my papers. The thing has almost gone out of my memory, it has been so long ago.

Q. But do you remember the Manhattan Transit Company? A. Yes; I think they controlled at the start.

Q. At one time? A. I think they did control it at the start. I know they still control.

Q. And wasn't that that company in which Croker and Freedman were interested? A. No; I never heard of their having any interest in that company at —

Q. Didn't hear that Mr. Croker had obtained the charter of the Manhattan Transit Company? A. Never heard any such thing. This is the first time I have heard that statement. Mr. Hoagley has always controlled that company so far as I know.

Q. Yes, in later years. But I am — A. I never heard —

Q. I am referring to the early days. A. I never heard of any time when Mr. Freedman had anything to do with that company or Mr. Croker. I think you are mistaken about that, Mr. Moss.

Q. Well, I based my question upon newspaper information that I had. A. That is a dangerous business.

Q. I know it is. That is a dangerous business, but I stated it for what it was worth. Sometimes it gives valuable views. A. Oh, yes; it does; sometimes it gives very misleading views.

Q. Yes. I got that information as far back as 1912 — published as far back as 1912. A. Well, I never heard in all my connection with the Longacre Company of Mr. Croker or Mr. Freedman having anything to do with it; and yet you may be right.

Q. Did you ever come in contact with Mr. Freedman in the dealings with the Interborough Rapid Transit Company? A. No, not so far as I recall in connection with the Interborough Rapid Transit Company or its dealings. Mr. Freedman was a very near friend of mine; I am one of the executors and trustees of his estate.

Mr. Moss.— Yes.

Mr. Untermyer.— But I have nothing to do with the affairs of the Interborough. They were in the hands of other counsel.

Q. Yes. But there was a time when the affairs of the Longacre Company and the Interborough Company were under discussion together, wasn't there? A. I think there was such a time, but I think that Mr. Shonts is the man with whom those dealings were held. I don't think Mr. Freedman had anything to do with them.

Mr. Moss.— Yes.

Mr. Untermyer.— Not so far as I can recall.

Q. Well, just for the sake of the record, and an understanding of the Longacre Company, do you recall that in 1911 an application was made to the Public Service Commission to approve a mortgage of $50,000,000, and that the mortgage was approved and permission was granted to issue $2,000,000 worth of stock and $4,000,000 worth of bonds under that mortgage? A. You mean of the Longacre?

Q. Yes. Did you have anything to do with that? A. No; I had nothing to do with that. I have a vague recollection that there was some application made to the Public Service Commission and that they did authorize an issue of some sort of securities.

Q. That application was opposed by the Edison Company. A. Yes, I remember that.

Q. And at first the Commission refused to authorize it and then the Court overruled the Commission and it was compelled to

authorize it. A. Now, that you speak of it, I remember that circumstances quite well. That was during the time that we were concerned with the Longacre Company.

Mr. Moss.— Exactly.

Mr. Untermyer.— But we had nothing to do with that application.

Q. Then, the stock having been issued, the Edison Company attacked upon the ground that the company had no valuable property? A. Yes, I think something of that kind took place. But I think the company was represented in those proceedings by Mr. Graham.

Q. What Mr. Graham was that? A. He was formerly of Philadelphia.

Mr. Moss.— Oh, yes.

Mr. Untermyer.— I think he is in Philadelphia now. And by his partner. I think Mr. John C. Sheehan controlled the Longacre Company at that time.

Mr. Moss.— Yes.

Mr. Untermyer.— And he conducted those proceedings through his own counsel.

Q. Well, that case, upon those applications, got into the Court of Appeals some three times? A. Well, I don't think it got in the Court of Appeals three times in connection with the proposed bond and stock issue. I think it went up to the Court of Appeals once in connection with that subject, but it had been there previously.

Q. Yes. Well, at least twice, then. When the Court had given its sanction to the issue of stock — bonds — there was trouble with the Empire Company about the ducts; the Empire Company wouldn't let its wires go in their ducts. Then a bit of litigation over that. A. Well, I believe that is so. That was years ago.

Q. Yes. Well, that was only 1912. A. Yes; I thought it was before that. At any rate, I know that the Longacre Company has been up against the most variable opposition.

Q. Of course, that opposition of the Empire Company was aided, or enjoyed, at least, by the Edison Company. A. I rather assume so.

Q. Yes; the Empire is a subsidiary. A. I had supposed the Empire was owned by the Edison.

Mr. Moss.— Yes.

Mr. Untermyer.— It ought to be owned by the city.

Mr. Moss.— Yes; but there had been a suit pending for fifteen years to try to bring it to terms; but the corporation counsel don't seem to be able to move; there is something the matter.

Q. In August, 1912, there was incorporated the Intercity Power Company, incorporated in Delaware, to take over the Longacre? A. Yes; I think so.

Senator Thompson.— This was the case where the referee got so old he can't get out of the house?

Mr. Moss.— Yes; there have been several referees.

Mr. Untermyer.— I think the lighting situation in the city of New York is in a pretty sad state.

Mr. Moss.— Will you state — I think it is an interesting remark that you made — why you think the Empire Company should be owned by the city of New York? A. It controls the ducts, as I understand, doesn't it?

Q. Establishes the rentals? A. Establishes the rentals, yes. I think it ought to be in such situation that any company that wants to supply power to the city, and gets a charter to do so, should find a place in the ducts instead of having all the wires pre-empted.

Q. Well, every new company that wants to do business in New York has to fight its way for a duct privilege, and fight it with a private corporation, doesn't it? A. That is the situation as I understand it.

Q. Yes; and there have been any number of fights and some suits in the efforts of private companies to get into the ducts? A. I believe so.

Q. Yes; and it is interesting, too, Mr. Chairman, to remember that there is a recapture clause there.

Senator Thompson.— We'd better get the contract.

Mr. Moss.— There is a recapture clause there which the city has never acted upon, and the expense of recapture is constantly growing, because the company for many years, and probably still, puts its surplus into plant, builds; and its surplus earnings never pays the city anything; and buildings with its surplus earnings is a constantly growing burden to recapture.

Mr. Untermyer.— Mr. Moss, don't you think it may be a little unprofitable to attempt to go with me into this Longacre situation now, because I have the most vague recollection —

Mr. Moss.— I sha'n't go into it very deeply.

Mr. Untermyer.— It will be necessary for me to revive my recollection by looking at the documents. It is some years since I had anything to do with it. I surrendered all my connection with it some years ago.

Mr. Moss.— I am asking you some of these questions because I understand Mr. Grosstein, who knows most about them, is not within reach of our subpoena; he is out of town. You know the gentleman I refer to? A. No; I don't know him.

Q. Mr. Grosstein? A. Is he connected with the Longacre Company?

Q. He used to be. A. Not during the time — I never came in contact with him during the time I had relations with it.

Q. Yes. Did the company, as far as you know, have any arrangement with the Hudson and Manhattan Company — the McAdoo Tube Company? A. No; not that I ever heard of.

Q. Didn't the plan of the Longacre Company contemplate the taking of power from other concerns that had surplus power, and accumulating that power and selling it, under proper arrangements made between itself and the other companies producing surplus? A. That was the plan that they were endeavoring to evolve — I mean that was the plan that was discussed, and which they expected to be able to carry out.

Q. Do you know of a proposition that was pending between the Longacre Company and the Interborough Company by which the surplus power of the Interborough Company would be sold to the conferences with Mr. Andrew Freedman and with you; that Mr. ness with it? A. I believe there was some discussions on those lines.

Q. Did you have any part in those discussions? A. Really, I think I shall have to consult my records before replying as to whether I directly took part in those discussions.

Q. Yes. Well, now, I am going to ask you to do that — refresh your recollection. Way early in this part of the investigation, Mr. Headley was testifying, and his testimony indicates that there were conferences with Mr. Andrew Freedman and with you, that Mr. Headley conferred with you on this subject. Does that recall anything to your mind? A. I don't recall ever having a talk with Mr. Headley on the subject. I don't think I know Mr. Headley; and yet I may be wrong about it.

Q. He is one of the vice-presidents of the Interborough Company? A. Yes, I know he is; I know of him, but I don't recall knowing him.

Q. He says he had two conferences with you on that subject. A. Well, it may be, Mr. Moss; my memory is very hazy about the whole subject.

Q. He says: "The negotiation was started with the view of making our our machinery earn money during the hours of the day when we do not need it for our own purposes." Well, now, I am going to ask you to — A. There was such a negotiation.

Q. Yes. A. And I had some part in it. Now, precisely what part I had in it, I can't say. I know that it proved abortive; it came to nothing.

Q. Wasn't that one of the important matters that you had to deal with? A. Yes, I think it was. It was one of the important matters with which the company had to deal.

Q. Well, that was referred to you? A. Well, the extent to which I personally handled it I don't recall at the moment. But I can get you those particulars.

Q. All right. Now, I am going to ask you, Mr. Chairman, to excuse Mr. Untermyer till further notice, and he will look over

his papers and documents, and if it is advisable I will call you, Mr. Untermyer.

Mr. Untermyer.— Yes.

Q. Mr. Untermyer, right here — why did those negotiations come to naught? A. It would be pretty difficult for me to say why they came to naught, because they were manifestly to the advantage of the Interborough.

Q. Yes. They would have made a good deal of money on it. A. Yes. I think that will prove a long story. I will have to look it up and see what I can find out about it.

Mr. Moss.— All right. Now, Mr. Nicoll.

Senator Thompson (to Mr. Untermyer).— I don't suppose it is material which convention you are going to attend.

Mr. Untermyer.— Well, I am perfectly willing to go as a delegate to both; but I have only been invited to go to one. I will wait for you, Senator.

Testimony of DELANCEY NICOLL.

(Mr. Nicoll had taken the stand as Mr. Untermyer was asked final question by Mr. Moss.)

Mr. Moss.— Mr. Nicoll, we have been inquiring about the negotiations between the Interborough Company and the Longacre Company, over a proposition that the Interborough Company would sell its surplus power to the Longacre Company, or that the Longacre Company might buy it and use it in their own way for sale to private persons. Have you any recollection of that? A. Well, whatever information I have on that subject must have come by reason of my relation as counsel attorney and counsel to the Interborough Company and any testimony that I will give it seems to me would lay me open to the charge of disclosing confidential communications. There is a statute, of course, which forbids me to do that. I notice from your subpoena, Mr. Moss, that you ask me to "bring and have with you from your office records and papers showing conferences, consultations and advice to and for the Interborough Company, with reference to the Longacre

Electric Light and Power Company, indicating a bill for professional services." I will say that, so far as I know, although in that respect I may be in error, I haven't any such papers and records at the present time. But I may be in error.

Q. Where would they be? A. They would naturally go back to the company.

Q. Go back to the company. But before you go any further, Mr. Nicoll — this would be the first time that any gentleman connected with the Interborough Company used the privilege of counsel not to answer questions. A. He hasn't got any option.

Senator Thompson.— I think that Mr. Nicoll called attention to that before.

Mr. Nicoll.— I have no option on the subject. It isn't my privilege, it is the privilege of the company.

Senator Thompson.— I think that at the time Mr. Nicoll raised the question that President Shonts was present before the Committee, and I think he stated that he would waive the privilege.

Mr. Nicoll.— Mr. Shonts couldn't waive it; it is the privilege of the corporation; the corporation would have to waive it.

Mr. Moss.— Would have to waive it by resolution?

Mr. Nicoll.— Yes, it would have to waive it by a resolution, of course. This matter is so really unimportant that I only raise the point because I don't see how I could avoid the charge of having violated the statute. And there is another point, Mr. Moss, which I think I ought in frankness to say to you and Senator Thompson. I am perfectly well aware that it has never entered your mind, because neither you nor the Senator would issue this subpoena or any subpoena if I am right in my view. I think the powers of this Committee terminated with the adjournment of the Legislature, and that they have no powers whatever; that they are defunct as officials and they don't exist as an investigating committee.

Mr. Moss.— Oh, well, that is a question that we are not considering, because in dealing with the Interborough we have taken the view that they had nothing to conceal, and were glad to show —

Mr. Nicoll.— Oh, the Interborough has given you all their things.

Mr. Moss.— And I have no doubt they will continue to do it.

Mr. Nicoll.— They will.

Mr. Moss.— And I won't for a minute chop that question with you, Mr. Nicoll. Don't instruct us about our duties to other witnesses, and don't give other witnesses points, please.

Mr. Nicoll.— Why, I thought you'd like to know the law.

Mr. Moss.— Well, whisper it in our ears.

Senator Thompson.— The idea is that no committee can sit during the adjournment of the governing body?

Mr. Nicoll.— I have a brief here; I will read it to you, if you like. I have collected decisions of the courts of Illinois and Arkansas on that point —

Mr. Moss.— Mr. Chairman, I object to the witness going beyond the questions in that way. I object to the discussion in this way, Mr. Chairman, which can be carried on for only one purpose — that is, to throw out to the public an idea which may be of comfort to some people who are less willing to be investigated than some others.

Mr. Nicoll.— Mr. Moss, that isn't the idea at all.

Mr. Moss.— But, don't you see, it works that way?

Mr. Nicoll.— I did it for your benefit. You wouldn't want to issue subpoenas —

Mr. Moss.— Do we need to be instructed in the law by you, Mr. Nicoll?

Mr. Nicoll.— It is not that; I know you are a law-bound man, Mr. Moss.

Mr. Moss.— But I consider Mr. Nicoll now a voluntary helper to those who want to raise quiggling questions over the jurisdiction of this Committee.

Mr. Nicoll.— It is a fundamental question.

Mr. Moss.— But for you to sit there as a witness and to volunteer something that is not an answer to a question means simply that you are using your power and your wit to help other fellows to raise questions.

Mr. Nicoll.— I am extricating you from a very difficult position —

Mr. Moss.— We don't want to be extricated by you, Mr. Nicoll. — in which you may find yourself.

(Mr. Nicoll prepares to hand brief to Chairman.)

Mr. Moss.— Now wait a minute. Mr. Chairman, I object.

(Mr. Nicoll hands brief to Chairman.)

Mr. Moss.— Mr. Nicoll, I have here a copy of a bill which you rendered on the first day of May, 1912, to the Interborough Rapid Transit Company; a bill for $53,172.38, and I read from it: "Numerous conferences, consultations and advice, with reference to the Longacre Electric Light and Power Company franchise." "Numerous conferences, consultations and advice." Now, I want to know who you had those conferences with.

Mr. Nicoll.— I won't answer the question for the reasons I have already stated.

Senator Thompson.— If they were conferences with your clients, why, I think they are confidential communications. But if they are conferences with others I do not think so.

Mr. Nicoll.— Well, I don't think I had any conferences except with clients.

Mr. Moss.— Didn't you have conferences with the representatives of the Longacre Company?

Mr. Nicoll.— No.

Q. (Mr. Moss.) Wasn't there an effort made by some people in connection with these conferences —

A. (Mr. Nicoll.) Now hold on. I may have had, but I have no distinct recollection of it.

Q. Wasn't there an effort made by some of the people in connection with these conferences to hold the Interborough Company up for a large sum of money? A. I never heard of it. I never heard of such a thing. I think the only subject discussed with me at any conference with anybody representing the Longacre Company was the validity of the franchise of the Longacre Company and the validity of its issue of securities.

Q. Do you know if there was a conference pending to determine whether or not, substantially, the Interborough should be able to market its surplus power to this Longacre Company? A. Well, I think I must have known that, Mr. Moss.

Q. And did you know that if such an arrangement had been made it would have meant, by this time, some millions of dollars to the Interborough Company? A. No. I had nothing to do with any of the financial aspects of it, and I never gave them any consideration. I can't give you any more on that subject.

Q. Do you know why the Interborough Company did not take advantage of the opportunity to sell millions of dollars worth of power to a company that was willing to take it? A. I don't know. It was a franchise or a business proposition.

Q. Did anyone state in your presence that anyone connected with or interested in the proposition one way or the other demanded a large sum of money in connection with it? A. I never heard the matter discussed.

Q. You never heard any rumor to that effect? A. No, never heard anything of it.

Q. Now, when I speak of anybody asking a large sum of money I don't say that it is a person connected with either one of the companies or one company to the exclusion of the other, but any individual. You say you never heard of anything of that kind? A. Outline what is in your mind more distinctly. I don't follow you.

Q. What is in my mind is that there was a negotiation pending which, if it had gone through, would have been advantageous to the Interborough Company, and possibly also to the Longacre

Company, in that the Interborough Company would have got rid of a valuable amount of surplus power and the Longacre Company would have had it to do business with; but that someone wanted a large sum of money — someone or some persons wanted a large sum of money to put it through. A. Well, I never heard of that.

Q. And that the matter broke on that account. A. I never heard of that.

Q. Did you know that the Longacre Company was endeavoring to do a business partly, at least, in taking the surplus power of large producers and marketing it to private trade? A. Well, what I knew about the Longacre Company at the time I was connected with the matter, which is many years ago now, was only those matters relating to its organization and its charter and its powers and the question whether or not its powers had ceased, and whether or not it was in a position to go on and do business.

Q. Can you say with reasonable certainty that that is the only subject to which you addressed your attention? A. All that I recall, yes.

Q. When I ask you to look over your papers or refresh your recollection, so that we may call upon you at a later time —

A. You may. If there is anything that I can testify to, and you find that my point isn't a good one.

Mr. Moss.— That is all.

Testimony of H. D. STATT.

Mr. Statt is sworn and takes the stand.

Mr. Moss.— Now, Mr. Statt, you are superintendent of motive power of the Interborough Rapid Transit Company? A. Yes, sir.

Q. Did you at some time make some computations as to the surplus power the Interborough had and what might be done with it? A. Yes, sir, from time to time.

Q. When was that?

Mr. Quackenbush.— At this time I want to say that Mr. Hedley is here and Mr. Shonts is on call. But this is the day that all of

our boards meet, and if we can make some arrangement about time I would like to do it.

Mr. Moss.— Well, if your boards are all meeting to-day, let us give them till to-morrow for that.

Mr. Quackenbush.— Mr. Hedley is here and available.

Mr. Moss.—Mr Hedley I can ask a question to. Would you like to excuse Mr. Statt?

Mr. Quackenbush.— Oh, no, oh, no; Mr. Statt can go on.

Mr. Moss.— Well, I will ask Mr. Hedley some questions.

Mr. Quackenbush.— I am only concerned about Mr. Shonts. Mr. Hedley is here, and Mr. Shonts is on call.

Senator Thompson.— Mr. Shonts will be excused.

Mr. Moss.— When was that computation made?

Mr. Statt.— In the fall of 1911, as I remember it.

Q. And how did it come to be made? A. On request from Mr. Hedley.

Q. And what was the purpose of it? A. The purpose was to see what surplus power we had available for sale, and at what cost we could sell it.

Q. Yes. Now, will you show us what the result of your computation was? A. I haven't got figures here. Mr. Hedley has them.

Mr. Moss.— Mr. Hedley, can you produce the figures?

(Papers are handed to Mr. Statt.)

Q. What have you with you, Mr. Statt? A. I have some figures on the cost of power, and possible use of surplus power for lighting and other purposes.

Q. Now, will you state what was you computation in 1911? A. I have here a memorandum dated November 6th, 1911, and it is simply a memorandum to Mr. Hedley, on the assumption that if we sold 50,000,000 kilowatt hours per annum at one cent per kilowatt hour, it would bring a profit under certain conditions —

namely, that of not being required to supply power during our rush hours or when we require the power ourselves, of about $100,000 per annum.

Q. Is that profit over manufacturing cost? A. Yes, over manufacturing cost? A. Yes, over manufacturing cost. That is, assuming we had to make no additional investment for the purpose.

Q. Yes; and that was at only one cent? A. At one cent per kilowatt hour.

Q. Was any other figure mentioned, than one cent? A. There was a figure mentioned of three-quarters of a cent, if they would agree to put in storage batteries and simply all we had to do was charge them during the night.

Q. How much profit would there have been on that basis? A. I will have to look over this a moment. Actual profit estimated at that time was $250,000 per annum.

Q. On what quantity? A. Some 50,000,000 — excuse me; I am now talking about the base of one cent per kilowatt hour. On the base of three-quarters of a cent the net profit would have been about $150,000.

Q. Isn't one cent a very low price? A. For wholesale purposes, and on non-peak load work, it would be a fair price, provided we didn't have to make an additional investment over what we have now.

Q. Well, where did you get your basis for one cent as a price? A. It is derived from our production costs, ignoring our investment.

Q. Then, ignoring the investment, taking the production cost, what did you do? You estimated upon that in what way? A. I estimated upon it in this way — took the actual cost of production — and it is some time ago now, it is five years, my memory is not very safe on it, but my recollection is that I added a certain profit of 15 per cent, and then that was based upon the assumption that no additional investment would have to be made.

Q. Yes. But did you ever attempt to figure including in the basis the investment cost? A. Not for that particular purpose.

Q. If you had taken the investment cost as well as the produc-

tion cost and put your 15 per cent on that, what rate would you have had? A. It would practically have doubled that rate.

Q. To two cents? A. Yes.

Q. Well, then, do you think with an allowance for investment cost, an allowance for production cost, that you could have profitably sold at two cents? A. On a wholesale basis, yes.

Q. On a wholesale basis- A. Deliver it. Our business to supply the power, they to have their own cables and conduits.

Q. How long were you engaged in making these figures — about? A. I can't recall. It was probably a few days.

Q. Did you undertake to figure again after that? A. No, sir; the matter was dropped after that — shortly after that.

Q. The matter was entirely dropped in 1911? A. As far as I am concerned, yes, sir.

Q. Yes. And no more demands made upon you for any figures? A. Not for any at that time.

Q. Did you know why it was dropped? A. My information was that it was dropped because the company hadn't the right to furnish power under its franchise except for railroad purposes.

Q. Who told you that? A. I can't recall. Possibly some of our counsel or perhaps Mr. Hedley. That was five years ago and I don't recall.

Mr. Moss.— Now I will ask Mr. Hedley.

Senator Thompson.— Don't you want to ask him any further questions?

Mr. Statt.— This particular report I have here is dated November 6th, 1911.

Q. Do you know whether anybody threatened legal action? A. No, sir, I do not.

Q. Do you know whether any other company knew of these negotiations and interfered in any way? A. Not to my knowledge.

Mr. Moss.— That will do. Mr. Hedley?

Senator Thompson (to Mr. Statt).— I would like to ask you a question. These figures — how do you figure production cost per

horse power? A. Production cost — all of the figures on the basis of per kilowatt hour.

Senator Thompson.— On a basis of 365 days in the year, and every day, all the time, how much per horse power? A. I couldn't answer that offhand, Senator. I can give you —

Senator Thompson.— That is a basis for very good power, isn't it? A. We don't use that.

Senator Thompson.— That is the only real standard to go by, isn't it, with electric power? A. No, sir, it is not.

Senator Thompson.— What standard do you go by? A. You must take the actual factor of your own load —

Senator Thompson.— I understand, your load factor. But that is where you get back to basis of production, isn't it? A. You must take that into account. Our average unit is only twelve hour per day for the Interborough.

Senator Thompson.— Yes, I am taking that into consideration. But you find the real cost of power based on its continuous use. No power is of any value unless it is in continuous use. You have to figure all the time, don't you? A. We never do it that way.

Senator Thompson.— You don't do it that way? A. No, sir.

Senator Thompson.— Well, you couldn't tell me what your cost of production is based upon that? A. Not for 24 hours; I would have to go back and make some calculations.

Senator Thompson.— Have you ever figured it out in cents per kilowatt hour? A. On our present basis, yes.

Senator Thompson.— And how much did you figure? A. On our present basis of approximately 50 per cent load factor of production cost per load, our is between .33 and .4 mills.

Senator Thompson.— That is figuring a load factor of 50 per cent? A. 50 per cent.

Senator Thompson.— If you figured on this contract your load factor would be higher and your cost cheaper? A. Yes, sir, and the cost would come down.

Senator Thompson.— Based on .33 — well, it would be about 30,000 horse power per year based on that, something like that? A. Yes, approximately; three-fourths per kilowatt —

Senator Thompson.— Do you know the basis on which the company claimed their cost, taking into account the overhead and everything; about 4.4; .3 is what they claim.

Mr. Moss.— How much surplus power are your producing now? A. There is available approximately 50 per cent; 50 per cent of the total kilowatt hours generated; we could generate that much more.

Q. Yes; what was that total? A. That is about the surplus kilowatt hours we could generate, supposing we had load for it; it would amount to, for each plant, about 500,000,000 kilowatt hours per annum.

Q. Now, that 500,000,000 is what you could produce extra? A. Over and above what we are doing now.

Q. Yes. Well, in your figure made four years ago you were only figuring on 50,000,000, instead of 500,000,000. A. I think that is all they asked for.

Q. I see. A. Our plants have been very much enlarged since then.

Q. Yes. So that the estimate you gave up for four to five years ago would be multiplied by ten as a possibility now? A. I don't recall what that estimate was, but the figure I have given you just now is substantially correct — 500,000,000 for each plant.

Q. How many plants are there? A. Two.

Q. Two. Then it would be twenty times — it would be twenty times the estmate made for 1911. A. These figures I have just given you apply to what we will have installed by the end of 1917.

Q. Have any plans been discussed for the use of that extra power? A. Yes, sir.

Q. What are they? A. The principal plan we have been discussing was the extraction of nitrogen from the air.

Mr. Moss.— Yes.

Mr. Statt.— Thereby producing nitric acid; and we have been making an investigation of that subject for several months, prob-

ably seven or eight months, and are waiting before making a final report to get a further report from Norway.

Mr. Moss.— That will do. Mr. Hedley?

Mr. Moss.—(Question to Mr. Statt as he is leaving stand.) On that basis you could sell for a half a cent a kilowatt hour, couldn't you, on your present basis forms?

Mr. Statt.— Neglecting fixed charges.

Testimony of FRANK HEDLEY.

Mr. Hedley is sworn and takes the stand.

Mr. Moss.— Mr. Hedley, did you have any part in this negotiation for the transfer of your surplus power to the Longacre Company four or five years ago? A. Yes, I was present at some of the discussions, made some of the figures —

Q. And whom did you meet in those discussions? A. Why, I met Mr. Statt, our superintendent of motive power, more than anybody else, Mr. Shonts, our president, and Mr. Untermyer.

Q. What subject was discussed by Mr. Untermyer? A. As I recall it, the general question of furnishing power from the Interborough to the light company, in both as to amount of volume that they would require, and as to the price to be paid — that they would pay for it.

Q. Where were those conversations with Mr. Untermyer held? A. As I recall it, in Mr. Untermyer's office on at least one occasion, and possibly two.

Q. Did you understand he was representing the Longacre Company? A. That was my understanding — more by inference than anything else, because —

Q. Yes. Was anyone else present representing that company? A. Yes, I think there was; and I don't recall who it was outside of the fact that I know Mr. Statt was with me once, and Mr. Shonts took me there both times I think.

Q. Well, now, the financial backers were Harvey Fiske & Sons, weren't they? A. Why, I don't think so. At that time that wasn't my understanding — at the time I was dealing with Mr. Untermyer.

Q. Did you meet Mr. Sheehan — Thomas C. Sheehan? A. No, I don't recall that we did meet Mr. Sheehan.

Q. Did you meet Joseph H. Hoagley? A. Oh, I have known Mr. Hoagley for many years, and I don't recall that he attended the conferences.

Q. Who were the financial people that you understood were behind the Longacre. A. I understood that Mr. Hoagley was behind it.

Q. Yes; and who else? A. I don't know. I didn't know who was behind it, outside of Mr. Hoagley. Mr. Hoagley told me himself that he controlled it; it wasn't at one of these meetings, but I think it was one evening — I know I met him somewhere outside of the office.

Q. Did you know of Harvey Fiske & Sons in connection with it? A. I didn't hear of Harvey Fiske & Sons in connection with it until after we had discontinued, as I recall it, our negotiations with the Longacre Company; and then I understood that Harvey Fiske had bought the bonds. Someone told me; I don't know where I got it from.

Q. Did you know of A. B. Leach & Company in connection with it? A. Yes; since Harvey Fiske bought it quite recently I have known of Leach & Company having some interest in it, because of the fact that Mr. Hoagley whom I have known for many years is now president of that company, and he and I had several talks about it.

Q. Did you know of Mr. Freedman in connection with it — Andrew Freedman? A. I don't recall that Mr. Freedman had anything to do with this. Of course he was a member of the Interborough Rapid Transit Company's Board of Directors at that time and I have no doubt Mr. Shonts mentioned it to that board.

Q. Yes. Well, didn't Mr. Freedman always have an interest in the Longacre Company? A. I have never heard that.

Q. Leading back to the days of Mr. Croker? A. Not that I know of.

Q. When it was the Manhattan Transit Company? You heard of the Manhattan Transit? A. First I have ever heard Mr. Freedman's name associated with the Longacre Company was when you mentioned it here this morning.

Q. Well, I got it from publications away back in 1912, at the time these litigations were on. All right. Well, who else did you meet other than Mr. Untermyer in connection with the Longacre Company? A. Why, that is all I recall at the meetings where Mr. Untermyer was present.

Q. Well, supposing he wasn't present. A. After that it seemed to fall by the wayside, then they had a new president for the Longacre Company, and I talked with him, or he with me, several times about it. His name is Shore, Jim Shore — Mr. James Shore. I have known him a great many years, and it was simply conversation between he and I.

Q. Well, that was after it had fallen by the wayside? A. That was after the proposition had fallen, so far as Mr. Untermyer was concerned.

Q. Yes. Well, I am interested in the persons that you met before the proposition fell. A. I don't recall anyone, although I think there were two or three other gentlemen present. Mr. Shonts, I understand, made the appointment, because he told me to go to Mr. Untermyer's office.

Q. Well, what was the proposition that fell? A. Why, the proposition was that they wanted us to furnish them with power; they knowing that we had some surplus power in our power houses, and they figured that they could buy power from us at a profit to us that would be cheaper to them than it would by installing their own plant. And I agreed with them on that basis. I am satisfied from figures that if such a company has a right to do business, we can furnish them power for a lower figure than they can afford to build a plant for and we can make some profit on it, and so can they.

Q. What did you figure you could get a year for the surplus power that you could produce? A. Why, at that time they only asked us for 50,000,000 a year, as Mr. Statt has testified. As to the profits that we could get out of that —

Q. Yes, but you were figuring on a larger volume than that, weren't you? A. We didn't figure on a larger volume, but we knew that we had a very much larger volume that we could dispose of providing we could find a customer, and we could legally deliver it.

Q. You previously testified that you thought you might make two million, two and a half million a year, with a possible chance of more. A. I believe we can, and still believe so.

Q. Well, that amount would be larger now, on account of your larger power production, wouldn't it? A. Well, we had arranged — when I gave that testimony — we had arranged to put in the power; that Mr. Statt has testified to — the changes that are to be made there so that we are going to materially enlarge our plants.

Q. Yes; Mr. Statt's testimony this morning shows an annual surplus, possible surplus, of 1,000,000,000; that is kilowatt hours, isn't it? A. Yes.

Q. A possible surplus of 1,000,000,000 kilowatt hours — what would be your profit on that? A. Well, I am unable to say at this time, because the ratio of profit on delivering 1,000,000,000 surplus, if that is the figure to use, would be changed very materially from the ratio that we had to figure when we figure only fifty (50,000,000).

Q. Yes. Well, it would amount to a good deal more than two million and a half a year? A. Well, I am satisfied to stand on that; we are satisfied to start in making two millions and a half, if we can find a customer to get it, and get in a position where we can legally deliver it. That is inducement enough for us to go into that kind of business.

Q. Well, upon what rock did this negotiation break? A. Why.—

Senator Thompson.— The ratio of profit, assuming that the cost is .4, and assuming the negotiation is for 1.1, as you testified, it would make a profit of $7,000,000 a year if you sold a thousand million.

Mr. Moss.— $7,000,000.

Mr. Hedley.— Well, you are making figures that are 100 per cent perfection and —

Senator Thompson.— Oh, yes, this is theoretical.

Mr. Hedley.— And it is almost like dreaming.

Senator Thompson.— A million dollars don't scare me any more.

Mr. Hedley.— Gentlemen, it is very apparent that if the Interborough Rapid Transit Company can in some legal form sell its surplus power, produced by the work of its machinery that is already bought, and make anything from about one hundred to one hundred and fifty thousand dollars a year, it is a good business to do it. It is good business for the city of New York, too; it would enter into the contract with the city, now that it has bought an interest in the money earned on subway and money earned on the elevated, so that if we could make some arrangement whereby we can make a profit out of our surplus power, why, the city participates in that profit.

Senator Thompson.— Your contracts are not by reason of the city having the benefit? A. Well, that is, before any plants can be put up that would utilize it, the city would be our partner, participating in the earnings.

Q. (Mr. Moss.) You reached a point where 1.1 cent per kilowatt hour was practically agreed on, didn't you? A. No, not that I ever knew of.

Q. Well, who spoke that for you? A. Why, as I recall it, I started at one and a tenth cent; in the dicussions we did drop down to a cent — that we would furnish it for a cent.

Q. Did they agree to pay a cent? A. No, they did not.

Q. Now, listen to this question and answer: "Q. How many million dollars was it proposed to pay to the Interborough Company? A. Not any fixed sum of money, as I recall; whatever they used they were to pay a cent and a tenth per kilowatt, flat. I thought we would be able to make a couple of million dollars a year." Didn't they agree to pay a cent and a tenth? A. No, I don't —

Q. You said there that they did. A. I didn't say that they agreed to.

Q. But they were to. A. That is what we were striving to get them to pay.

Q. What did they say they would pay? A. They didn't say that they would pay anything, as I remember, but I have in mind clearly that I set the price at a cent and a tenth and in talking the matter over with Mr. Shonts on several occasions, he and I agreed

orally that we would go down to a cent; and I think that Mr. Shonts mentioned a cent to the electric lighting people. But I have never heard that they committed themselves to pay a cent.

Q. Well, you say that they asked — they brought it up — they asked for this transaction, the culminating of it. Didn't they ever agree to do anything, or propose to pay any amount? A. The way the matter came to me from the Longacre Company, as I recall it, it came from Mr. Shonts; and Mr. Shonts asked me to go into it and find out what we could do, they furnishing the figure that they wanted to start in on the contract, of about fifty millions a year. Mr. Statt then immediately proceeded to prepare figures to show what we could do and what we could afford to furnish it for. And at that time we set a cent and a tenth. Then there were one or two meetings, that I have already told you about, where they were not satisfied with the price — that is, the Longacre Company; they wanted to get down — have it cheaper. I didn't agree at the meetings to furnish it any cheaper. But at subsequent conferences I had with Mr. Shonts I did tell him that we could furnish it for a cent, and make a good deal of money; and whether he conveyed that to the Longacre people or not, I don't know.

Senator Thompson.— Were you satisfied with these figures — that to buy it from you at a cent and a tenth was cheaper than if they erected their own plant? A. In that volume, I believe it is.

Senator Thompson.— You do? A. Yes, sir, in that volume; when you consider the load factor they'd have and the distribution they would have to have, the distributing system they would have to have to deliver fifty millions, I think a cent and a tenth would be less money than they could produce it for.

Senator Thompson.— But they would have to distribute it after they bought it. A. They would have to come to our sub-stations and get it.

Senator Thompson.— You'd sell it? A. From sub-stations or —

Senator Thompson.— Well, what voltage would you sell to them at? What voltage would you have? A. Why, we are running 11,000 volts, and —

Senator Thompson.— They would take it at 11,000. A. We didn't get into that detail — as to whether it is going to be reduced.

Senator Thompson.— Well, that is the way you made it — 11,000; you generated 11,000. That is direct or alternating current? May I ask you another question: What cycle do you use in distributing? A. 11,000; 60-cycle (witness is corrected by gentleman present); 25-cycle; we had two 60's, we took them out and put in the 25.

Mr. Moss.— Now, will you give me, as nearly as you can, the conversation that occurred the first time you met Mr. Untermyer? I want to know what Shonts said and what Mr. Untermyer said and what you said. A. Well, I will, sir, but it's four or five or six years.

Q. I know I am asking you to do something difficult. But now try it. A. As I recall it, Mr. Shonts told me there was going to be a meeting between the Longacre and the Interborough as to furnishing power, and asked me to go down to Mr. Untermyer5s office. I went there, and Mr. Statt with me, and I had Mr. Statt's figures with me at the time. And I think Mr. Untermyer asked what we'd furnish it for. And I took the position there at that time, at a cent and a tenth. "Oh," he says, "that is out of the question. That is too high." "Well," I said, "that is what we'd have to get for it." And that is about all I recall took place.

Q. Well, now, the second meeting? A. At the second meeting, as I recall that, the question was as to where we would deliver the power, and the price, as was discussed to-day. And I don't recall that we ever, in my presence, mentioned a figure that was less than a cent and a tenth. But, as I told you, at subsequent talks I had with Mr. Shonts, I told him that I would recommend going down to a cent, and we'd make some money on that. Now, whether he conveyed that to the electric light people or not, I don't know.

Q. Was anything discussed other than the price that was to be charged? A. No, I don't recall that there was anything else, other than the price and volume; they were the only things we talked about.

Q. Did this matter fail because you couldn't get together on the price? A. Well, that is as far as I know. I don't know anything about the financial rating of that company.

Q. You spoke of it as "fallen by the wayside," and then you spoke of it as splitting on a rock. What did it split on? A. Did I speak of "splitting on a rock"?

Q. Well, your phrase, then, "falling by the wayside." What made it fall? A. Why, when I said it "fell by the wayside," I meant there was no final contract arranged for. And I don't know what made it fall by the wayside.

Q. Didn't you talk to Mr. Shonts about it again? A. Oh, yes; I have talked to Mr. Shonts about it.

Q. Didn't he tell you what made it fall by the wayside? A. No, sir.

Q. Did you ask him? A. Of course, outside of this fact, we have always had doubt as to whether we had in our charter a right, a legal right —

Q. You had that doubt when you began the consultation, didn't you? A. Yes, sir.

Q. Did you ask Mr. Untermyer about it? A. No; I didn't ask him.

Q. Was he spoken to on that subject, so far as you know? A. Not as far as I know. But I know we did have some litigation on the matter; some years ago we were furnishing power to the New York City Interborough —

Q. What was the result of that litigation? A. The result of that litigation was that the Interborough won its case; and the decision of the Court was, if I recall it right, at that time, that we had a right to sell that power to a railroad.

Q. Well, did it say that you hadn't a right to sell it to anyone else?

Mr. Quackenbush.— Well, Mr. Moss, my opinion about this, which has perhaps had something to do with this thing that you are inquiring into, has been that it would be unsafe for the Interborough Company to enter into a firm contract to sell power to any other than railroad companies, without additional legislation. In 1910 this matter was before the Legislature, when the Public Service Commission law was entirely rewritten and amended. I spent many weeks there with the committee — Mr. Parker was chairman — and the best that was done in the way of reaching this

question was to put into that statute a definition of an electrical corporation as an exception. Which, not presuming to quote precisely, is that a railroad company which is selling to a railroad or street railroad company, or to its own tunnels, but not to others, is not within the provisions. And the litigation that we had over our sale to the New York City Interborough and our tax litigation satisfied me that while the Court had sustained us in that limited sale of our surplus power, that it was a very grave question whether they would if we undertook to practically go into the electric development business. And I will say here that in respect to this matter I still have that doubt, and I should be very glad if we could have the co-operation of this Committee to bring about legislation on that subject. I think that very likely these doubts which I have expressed now and which I expressed to Mr. Shonts in 1911 and '12, have had something to do with that impression that Mr. Hedley has given you.

Senator Thompson.— You have made a brief on that?

Mr. Quackenbush.— We have briefs on these various cases that we have, and —

Senator Thompson.— On the question as to whether or not the Interborough had the right to sell its surplus power?

Mr. Quackenbush.— I looked this morning to see if I could find a brief on this precise question, and I wasn't able, among our files, on hurried examination, to find one. I have a sort of hurried impression, on talking with one of my assistants, that we had compiled that.

Senator Thompson.—I think, if there is any special law needed— for instance, if it turns out at the end of this that it can be effected by a law, I think it would be the disposition of this Committee to help you out to the extent of recommending it.

Mr. Quackenbush.— Well, I am very glad to hear that, and I shall have a further search in the files and if we haven't the brief I will prepare one and submit it here.

Senator Thompson.— It is a very far-reaching proposition; because you have here a better plant, you are producing a better class of goods than the present supplying company. You are pro-

ducing electricity at 11,000 volts, yours is 25-cycle power, which is the best class for power purposes that has been discovered up to date, and you also make an alternating current, which is better than a great deal of the power now in use for private lighting purposes. And not only that, but the city being a partner, why, it isn't a very far-fetched proposition that this power be used by the city to light its own streets, and things of that kind. It has a far-reaching effect. And the amount of machinery that you have considered, the productive ability runs away up into a very large amount.

Mr. Quackenbush.— Well, we appreciate that, sir, and will be very glad to have the co-operation of the Committee and its counsel. I might point out that in dealing with this to-day, I am confronted with what might be described as a more favorable situation than I was in dealing with it in 1911.

Senator Thompson.— I see.

Mr. Quackenbush.— And I would say that my suggestion to Mr. Shonts in respect to this very matter was that the contract with the city being possible and imminent, it would be altogether wise to defer making any arrangements until we had such relations with the city that we might expect the co-operation of the city and the state authorities.

Senator Thompson.— By way of comparison, for the record here, where it will be handy when we refer to it — but according to the report of the New York Edison Company for the year 1914, their entire production for that year was between six hundred and seven hundred million kilowatts — about six hundred and fifty millions of kilowatts. Now, I see here that the capacity of this plant appears to be a thousand millions. So by comparison — and they are furnishing the entire island of Manhattan, except, of course, such as have private plants of their own.

Mr. Quackenbush.— I think Mr. Hedley will tell you, Mr. Chairman, that a good portion of this surplus that you are discussing now, is now under consideration between our officers and the Public Service Commissioners and the officers of the Brooklyn Rapid Transit. I think some way can be found to take care of

their needs; so that it is a very live question with us. But in regard to the views which I entertained in 1911, and about that time, I think that I don't need to more than suggest to the Chairman and counsel that if we had made such a contract as was proposed or discussed, we would immediately have had an injunction from the hands of the Edison people to test it; and I don't criticise them for doing it, because it is a fair question as to whether we could do it or not.

Mr. Moss.— Well, they did their best to put the Longacre Company out of business, and they failed?

Mr. Quackenbush.— Well, I didn't think it was possible for the Interborough Rapid Transit Company, when it was negotiating with the city of New York, to build rapid transit railroads, to have a collateral question about its being engaged in electrical business. That was my judgment; I now, as I reflect back over the five years, think it was good judgment.

Senator Thompson.— Well, of course, it is a question of legislation; here we find, as in other matters, where you need legislation you haven't got it.

Mr. Quackenbush.— Well, I didn't think, in those years, which were critical years, that it was time for us.

Mr. Moss.— I suppose, Mr. Chairman, competition would tend to relieve the present heavy rates?

Senator Thompson.— Well, if you relieve the rates, as soon as you relieve the rates on that portion of the output, it comes under the peak or comes away from the peak, you find that your marking would double up very soon. The rates for lighting for domestic purposes here are high.

Mr. Moss.— Yes.

Senator Thompson.— You see, as we are beginning to find out that at three mills, three-tenths of a mill per kilowatt, which they could produce it for, you will find that means a third of a cent a kilowatt; that is the cost of production. Well, now they are selling it for eight cents, which is pretty nearly twenty-four times the cost of production, for domestic lighting purposes. Do you see?

Mr. Quackenbush.— Those figures, Mr. Chairman, if I understand right, do not allow anything for your overhead or your investment?

Senator Thompson.— I understand that. But allowing for overhead, it couldn't bring it up to over five million.

Mr. Quackenbush.— Well, now, you have got me; you have got beyond me.

Mr. Moss.— Mr. Hedley, did you hear that anyone wanted a commission to bring this business about? A. (Mr. Hedley.) I heard you say so this morning.

Q. Did you ever hear it before? From anyone? A. No, sir; you are the first man I ever heard utter that.

Q. Well, I have been asking questions on that line. I am ask- you, too. All right. I have no further use for Mr. Hedley at this time.

Mr. Quackenbush.— Mr. Chairman, if you are interested in that question of cost, Mr. Statt has figures here. In fact, the figuring we have is more up to date than the figures you told me about.

Mr. Moss.— We will excuse Mr. Hedley so he can go about his work.

Senator Thompson.— If we can be of any service to you in this matter, we will be glad to do it.

Mr. Quackenbush.— Do you want to get these figures now?

Senator Thompson (to Mr. Moss).— Do you want to get these figures now?

Mr. Moss.— Yes, while he is here.

Mr. Statt takes the stand.

Mr. Moss.— You know what we want.

Mr. Statt.— The total cost of production of power, including fixed charges, was for the two power plants as follows: The 74th

Street station gave a total cost of .7718 cents per kilowatt hour; the 59th Street plant gave a total cost of .6975 cents per kilowatt hour.

Senator Thompson.— That is, taking in investment? A. Yes; that is taking in investment, taxes, all charges, and also an allowance for amortization. The whole basis of it is pretty long.

Senator Thompson.— When will we have a copy of that?

Mr. Moss.— That is the simplest way.

Senator Thompson (to Mr. Quackenbush).— Can you let us have a copy of that?

Mr. Quackenbush.— We will be very glad to do that.
Senator Thompson.— We will suspend now until 2:30.
Recess until 2:30.

AFTERNOON SESSION.

HELD IN ROOM 507.

The Committee came to order at 2:30 P. M.

Mr. Seney Plummer, counsel of the Longacre Company, is present to testify.

Mr. Moss (indicating witness chair).— Mr. Plummer, will you take that chair right there?

Mr. PLUMMER is sworn and takes witness chair.

Senator Thompson.— I will read this into the record.

George F. Thompson, Chairman, Thompson Legislative Investigating Committee, City of New York:

Dear Sir.— We believe that it is within your power to investigate and put a stop to the abuse of "listening in" on the telephone wires of private citizens, which abuse has been proven without a question of doubt.

With a view of finding out those responsible for this abuse we, the undersigned, respectfully request that you begin this investigation.

Very respectfully,

W. E. EARLY, 223 South Fourth street, Brooklyn;
JAMES J. MCGINTY, 72 South Second street, Brooklyn;
PETER J. WARD, 151 South Second street (2813 Greenpoint, Telephone No.);
FRANCIS S. MCAVOY, 516 West 153rd street;
GEORGE W. SIMPSON, 51 Chambers street, New York City;
WAKEMAN & MCLAVIN, INC.;
H. FERBER,
JOSEPH S. RYAN.

Senator Thompson.— Counsel is requested to look into this matter.

Mr. Moss.— Do you make any direction about calling witnesses now?

Senator Thompson.— Well, the counsel better look into it and report and call witnesses under very short notice. Of course, you have certain plans, and this might interfere with it — to take it up right away. You can take it up and report, and we will see.

Mr. Moss.— I see.

Senator Thompson.— All right.

Mr. Moss.— Take it up as a matter that may be investigated.

Senator Thompson.— Well, as a matter that should be investigated. I think in the first place you better get into communication with the New York Telephone Company and see what information they have for us on the subject.

Senator Lawson.— Also with the district attorney.

Senator Thompson.— Senator Lawson suggested we also communicate with the district attorneys of the two counties — New York and Kings. But in the first place the telephone company probably have got some information on the subject.

Testimony of SENEY PLUMMER.

Mr. Moss.— Mr. Plummer, give your name in full, please.

Mr. Plummer.— Seney Plummer.

Q. And you are a member of the firm of Thacher — A. I am associated with the firm of Simpson, Thacher & Bartlett. We are the attorneys for the Longacre Electric Light & Power Company.

Q. How long have you been such attorneys? A. I think since 1912 — I know.

Mr. Moss.— Mr. Chairman, Mr. Plummer came up with some of the witnesses this morning that I had subpoenaed from the Longacre Company, and realizing that those who knew the most were not available, Mr. Plummer came up in a very pleasant spirit and offered to supplement the testimony with such facts as a lawyer might be able to give us. As this matter of the Longacre Company may become very interesting before we finish with it, I think that we should accept what you can give us, Mr. Plummer.

Q. When did you become connected with that company? A. I think 1912 — 1911 or 1912.

Q. At the time that you became interested in the affairs of that company, had the negotiations with the Interborough Company that were heard of this morning been discontinued? A. I never had heard of them until this morning.

Q. You never heard of those negotiations until this morning? A. Nothing.

Q. Now, what was the nature of that business when you first became interested in it? A. At the time we became counsel for the Longacre Company, it was engaged in litigation in the attempt to have its franchise established by the courts; prior to the time when we became counsel for the company it had been through the mill once or twice; and the first, as appears from the reports — law reports (I digest the facts)— was back in 1906.

Q. Yes; give us a reference to the case, if you have it there — to the reports. A. Yes. At that time, the Longacre Company, having acquired the franchise which originally belonged to the American Electric Illuminating Company, applied for space in the ducts of the Consolidated Subway Company. I think Mr.

Untermyer was wrong when he called it the Empire. And that was opposed, that application, by the —

Q. The Consolidated carries the high-tension wires, doesn't it? A. Yes.

Q. And the Empire the low-tension? A. The low-tension. The Consolidated Subway Company declined to grant space and a writ of mandamus was sued out by the Longacre Company, which was granted by Judge Dowling, and the report is 51 Miscellaneous, 407. The Consolidated Subway Company appealed to the Appellate Division, which affirmed the mandamus; that is 117 Appellate Division, 80. And that was affirmed in the Court of Appeals, 188 New York, 361. The title of that case is, "Matter of Longacre Electric Light & Power Company."

Mr. Moss.— Yes.

Mr. Plummer.— The Longacre Company then applied to the Public Service Commission for authority to issue securities and in that application it was opposed by the New York Edison Company. Its application was denied by the Public Service Commission on ten grounds, every one of which was reversed by the Appellate Division.

Q. What were the principal grounds of those ten? A. Well, I don't know; I don't remember.

Q. Do they appear? A. They are all set out in the opinion of the Appellate Division, in 137 Appellate Division, 810.

Mr. Moss.— I am going to study that.

Mr. Plummer.— An appeal from that order of the Appellate Division was affirmed by the Court of Appeals, 199 New York, 254. The title of that case is, "People *ex rel* Longacre Electric Light & Power Company versus Public Service Commission." I would like to correct my statement about the Court of Appeals. The Court of Appeals dismissed the appeal on the ground that it was not affirmed. So the case went back to the Public Service Commission again, and again it was opposed; the Longacre Company was opposed by the New York Edison Company.

Q. That company was the opponent consistently throughout, wasn't it? A. Yes.

Q. Who represented the Edison Company? A. Beardsley, Hemmens & Taylor.

Q. Were there any other counsel in the cases? A. On the appeals there were other counsel; Judge Morgan O'Brien argued one of the appeals in the Appellate Division, I think; Judge Parker, Mr. Stanchfield, former Judge Haight, in the Court of Appeals.

Mr. Moss.— And they are all familiar names, Mr. Chairman.

Senator Thompson.— Did they try all the law suits here? A. Those are appeals.

Q. (Mr. Moss.) Well, the attorneys, Beardsley and Hemmens, are the regular attorneys for the Edison Company? A. Yes; I believe so.

Mr. Moss.— Yes.

Mr. Plummer.— The Longacre Company then applied again to the Public Service Commission for authority to issue stock and bonds and that was granted; then the New York Edison Company sued a writ of certiorari from that decision and the Appellate Division affirmed the Public Service Commission; that is 151 Appellate Division, 832. The Edison Company appealed to the Court of Appeals which, four to three, reversed the Appellate Division on the ground that the Longacre Company should have had a certificate of public convenience and necessity as required by the Public Service Commissions law.

Q. Do you remember how the Court of Appeals bench divided? A. I know Judge Cullin, and William Parker were the minority; Judge Cullin wrote the majority opinion, and I think there were Judges Cuddeback, Hogan and Werner, who concurred with him.

Q. Yes. A. I am not certain. The title of that case is, "People *ex rel* New York Edison Company versus Willcox and others and the Longacre Electric Light and Power Company." Then we went before the Public Service Commission again, and the Public Service Commission granted the certificate of public convenience and necessity. The New York Edison Company opposed that and appealed to the Appellate Division which affirmed the act of the Public Service Commission; that is 158 Appellate

Division, 878, and that was in turn affirmed by the Court of Appeals, 210 New ork, 527. The title of that case is, "People *ex rel* New York Edison Company versus McCall and others, and the Longacre Electric Light and Power Company," that was.

Q. Well, wasn't there some litigation about the effort to get permission to issue stocks and bonds? A. Yes, I have spoken of that.

Q. That is included in your statement? A. That is included. That was really taken up twice by the Public Service Commission. The first time they denied it, on those ten grounds that I spoke of, and the second time they granted permission.

Q. Did you make an effort to put the wires into the conduits? A. Oh, yes.

Q. State the opposition that you met? A. Well, that was before the Simpson, Thatcher and Bartlett Company had anything to do —

Q. Yes. A. — with the Longacre Company; at the time we became counsel for it, it was operating.

Q. Do you know anything about an agreement between the Longacre Company and the Hudson and Manhattan Company, the McAdoo tubes? A. There is such an agreement which is filed with the Public Service Commission.

Q. And what is the general purport of that agreement? A. I suppose it has a public record.

Q. I know, but you have the general content of it. A. Well, I was just thinking about whether this is a privileged communication that I —

Q. This is a public record. A. And the general purport of that is that the Longacre Company pays the Hudson and Manhattan Company, I think, the fifteen hundred dollars a month — I am not certain about these figures — for which it is entitled to receive a certain amount of electric current.

Q. Yes. A. The amount I don't remember.

Q. Was there any question raised in that case about the power of the Hudson and Manhattan Company to enter into such an agreement? A. Well, I had nothing to do personally with it.

Q. Have you heard of any such question being raised? A. With that agreement I understand that the question was discussed.

Q. What is considered? A. What is considered.

Q. But the contract was made? A. The contract was made.

Q. And the companies entered into the contract? How long has it been in force? A. I think for about a year and a half.

Q. Well, by that contract the plan is that the Longacre Company gets some of the surplus electricity of the Hudson River tubes? A. Yes.

Q. Which they have the privilege of marketing to private consumers? A. That is it.

Q. Are there any other contracts of that kind? A. I don't know of any.

Q. I have understood that there may be passed a plan for the building of a power plant on the Hackensack meadows, do you know anything about that? A. No.

Q. Do you know the rate between the two companies? A. No, I don't.

Q. Or the amount of electricity to be supplied? A. The contract, of course, would tell, but I don't know.

Q. Yes, of course, but I thought perhaps you would know. Do you know whether there has been any discussion of a plan by the company for handling surplus power from large buildings? A. No, I don't know of that. That would be within the operating end for which —

Q. I know, but that is what I want to get at. Who is there in the Longacre Company that can come here and tell us about those things? A. I think Mr. Gossler probably could.

Q. Where is Mr. Gossler? A. He was in Baltimore yesterday.

Q. Doesn't he live in New York City? A. He lives in New Canaan.

Q. New Canaan? That is, Connecticut? A. But I believe that he can be here the day after to-morrow.

Q. We would be very glad to have him come at his convenience; that is for the day after to-morrow. A. I will try to have him here then.

Mr. Moss.— All right.

Senator Thompson.— Then we will depend on that.

Mr. Plummer.— Don't depend too strong, but I will do my best.

Mr. Moss.— Suppose I send a subpoena to you, not for service in a formal way, but so that you will have a record of it.

Mr. Plummer.— Well, you can take my word for it, Mr. Moss, that I will try to have him here.

Q. Yes, or I will write a note and put in the date — something to bring to his attention. A. Yes.

Q. I want to have something that you can show to him. A. I can give you if you are interested in the opposition which the Longacre Company has had from the Edison Company.

Q. I would like to know all that you can give us. A. That is another — the Longacre Company some years ago issued bonds without obtaining the approval of the Commission, of gas, electricity; that is, the legality of those bonds has always been in question. They were purchased and action to foreclose the bonds was begun. It came on for trial before Judge Greenbaum, who in one of his findings of fact found that the New York Edison Company was the person who had purchased the bonds and was bringing the action to foreclose them.

Q. Yes. Now, let us get into that a little more closely. There was five hundred thousand dollars worth of old bonds, wasn't there? A. Yes.

Q. That was found in the estimate of William H. Kelley, a former local justice, but I don't know how many were in his estate. There were some. Yes, there was quite a bunch in his estate. Charles F. Murphy was his executor, wasn't he? A. His executor.

Q. And Charles F. Murphy as the executor of William H. Kelley sold these bonds to a number of people? A. Yes.

Q. Some charitable societies turned up as owners of these bonds? A. Yes.

Q. Well, when all of the efforts that you have detailed to put the Longacre Company out of business had failed, then the holders of these bonds acting in the interests of the Edison Company, as I understand you, Judge Greenbaum — A. Judge Greenbaum —

Q. Brought an action to foreclose that mortgage? A. Yes.

Q. And as the mortgage called for five hundred thousand dollars, it would have been a tidy sum for the Longacre People to raise. A. Yes.

Q. And that action went on before Judge Greenbaum and it was contended on behalf of the Longacre Company that the action was maintained in good faith, wasn't it? A. In effect it was.

Q. Substantially that, that it was not an action by the trustee which was the security company, wasn't it? A. The Metropolitan Trust Company.

Q. The Metropolitan Trust Company was not really acting for the bondholders, but was acting for the Edison Company? A. Well, in effect it was something like that.

Q. In effect, and that action resulted in a finding by Judge Greenbaum such as you have indicated now? A. Yes.

Q. So that action to foreclose was practically knocked out? A. That action was denied.

Q. Dismissed? A. No, I will tell you; the situation is very complicated.

Q. Yes. A. The Longacre Company's principal defense was that the coupons on those bonds had never been presented for payment.

Q. Yes. A. And it deposited in court the amount of all of those coupons. The plaintiff objected to that being done, and insisted that it had an absolute right to foreclose, but Judge Greenbaum held that he would dismiss the bill if that amount was deposited in court, which was done. An appeal was then taken from that decision of Judge Greenbaum's to the Appellate Division by the plaintiff in the action, while the appeal was pending some subsequent coupons were presented for payment at the office of the Longacre Company, and were paid and that fact being shown the Appellate Division dismissed the appeal. There was some question as to the form in which that order of dismissal was entered or should have been entered, and the Longacre Company, I believe, is appealing or striving to dismiss an appeal from that on the ground that it was not final. The Metropolitan Trust Company is endeavoring to take it into the Court of Appeals at the present time.

Q. That will do, Mr. Plummer.

Mr. FRANK B. LASHER, after being sworn, testified as follows. Examination by Mr. Moss.

Q. Mr. Lasher, you are connected with the Longacre Company in what capacity? A. Director and auditor.

Q. Do you know anything about the contract with the Hudson and Manhattan Company? A. I know there is such a contract, yes, sir.

Q. Have you a copy of it? A. Yes, sir.

Q. Have you it here? A. Not here.

Q. Do you know how much power the Longacre Company is to supply? A. I don't know the details of the contract.

Q. Do you know the price? A. I know there is a minimum price of fifteen hundred dollars a month?

Q. Yes, but how is it measured?

Senator Thompson.— You say you did not have the contract? A. Not with me.

Mr. Moss.— Well, you will be able to send it? Can you send it up this afternoon? A. Yes, sir, I can get it up here in a few minutes.

Q. Well, I wish you could. That is the particular point I want to ask you about, Mr. Lasher. Go ahead and telephone.

(Mr. Lasher excused in order to bring contract.)

Senator Thompson.— You have been sworn before Mr. Stevens. That was back in last September.

Mr. Moss.— That goes back before my time, doesn't it?

Mr. Stevens.— That is a long time ago.

Mr. Moss. Let me see that contract, Mr. Lasher, and you can be excused until the same time as Mr. Gossler comes.

(Examination of Mr. Stevens continued.)

Q. Did your former records show, Mr. Stevens — Mr. Stevens, your company put in a bid for the Harlem River tunnel? A. Yes, sir.

Q. Now, I want to ask you this general question. From your engineering experience, did you believe that tunnel upon which

your proposition was based to be a thoroughly practical, useful and serviceable tunnel? A. Yes, sir.

Q. Its usefulness was demonstrated wasn't it? A. Well —

Q. And its practicability and its economy? A. I thought so, at least, yes. I won't bet on it.

Q. Did you examine the specifications and the contract drawings, for all of those materials sufficiently to have an opinion as to whether that proposition was loaded? A. Was what?

Q. Was loaded against your bid? A. Well, I examined all of the types that were proposed.

Q. Yes. A. And also the specifications, but I never formed any such idea as that, Mr. Moss.

Q. Did you believe that you had a fair opportunity of bidding there against other bidders? A. Certainly, or I would not have bid.

Q. You believed that when you made your bid? A. Certainly.

Q. Have you had occasion to notice the construction that was used in the tunnel that has been building there? A. No, sir. I have given it no thought or observation since the bids were opened and the contract was let. I have never been near it.

Q. You don't know how it was built? A. No, sir.

Q. When the contractor lived up to the specifications? A. No, sir.

Q. Character of the concrete or anything? A. No, sir.

Q. Nothing of it? A. I lived on the New York Central across the bridge near there, that is all. I have passed there.

Q. Yes. A. Know nothing whatever about it.

Q. When you entered into some negotiations for the third-tracking of the elevated railways were the propositions made in your own name or were they made in the name of your company? A. My name.

Q. Was it the intention that that contract, if entered into, should be taken up by your company, or was it the intention that you should handle it personally? A. Handle it personally.

Q. Did you expect to have the help of the persons that were interested in your company? A. I don't quite understand that question.

Q. Well, there were persons who were directors and otherwise? A. No, sir.

Q. And otherwise interested in your company? A. No, I gave it no thought — no expectation of the sort.

Q. Among the persons that were interested in the J. F. Stevens Company were J. O'Brien and Nicholas Bradley. They were both interested, weren't they? A. They were stockholders, yes.

Q. Weren't they directors also? A. Well, I don't recall.

Q. I have a list of directors here. A. The records will show, I presume.

Q. Wasn't Mr. Vanderlip interested? A. No, sir.

Q. Wasn't the National City Bank a stockholder? A. No.

Q. Who first proposed to you that you should make an offer upon that third-tracking? A. Mr. Shonts asked me if I would consider the matter.

Q. What was said between you and him as to your compensation? A. I told him that it was a proposition that I didn't consider any man could intelligently make a bid on. That it was a matter that should be handled on a percentage.

Q. Well, what was said about the percentage? A. Well, there was considerable said about it. He asked me what I thought was a proper compensation on a percentage basis. After some consideration I told him fifteen per cent. We discussed the matter several times. He demurred to it. He never made me a definite offer, and we never agreed on any percentage.

Q. Did you know that ten per cent was tentatively agreed upon? A. Agreed upon between whom?

Q. In the board of directors. A. No, sir.

Q. Did you have in mind anything less than fifteen per cent? A. Well, no, Mr. Moss, I was trading and I put my price high.

Q. Well, then, you did? A. I set a price so that it could be cut down. I certainly did have something.

Q. But did you have a minimum beyond which you would not allow a cut? A. No, sir. I can't say that I did.

Q. Did you state any figures which you would not go below?

A. Now, I can't recall that. I think, in my own mind, that I would not have gone below seven and one-half, but I would not swear that I have stated that to anybody. It is a long time ago now, and I don't recall it.

Q. Well, it is in your mind that you might have taken seven and one-half per cent? A. Why, yes.

Q. Did you know that the proposition went into the board of directors with a blank where the percentage would have been written into the proposed contract? A. I don't recall that now. I don't know whether it did or not.

Q. Do you remember the opposition that was made to the entering into such a contract with you — the opposition that got into the newspapers? A. Oh, I remember reading things in the newspapers at the time, but I don't recall it now.

Q. And do you notice who lead off in that opposition? A. No.

Q. In the Board of Estimate? A. I don't remember now, Mr. Moss.

Q. Wasn't Mr. McAneny the most prominent? A. I think he was.

Q. I just call attention to this clipping I have in my hand from the World, July 24, 1913 —

Headline: *McAneny Shows that the Stevens Company Could Charge Percentage on Sub-Contractor's Commission in Addition to Total Cost of Third-tracking and Extension Work.*

Then, prominently, the article follows: "Interborough President, McAneny, who objects to the contract as detrimental to the city, believes it will be rejected."

Then, follows a statement of his objections.

A clipping here from the American. The first words in the headline are: *McAneny Sees Subway Grab Five Million Dollars in New York.*

When you were speaking of seven and a half per cent a moment ago, was that to include financing? A. Include what?

Q. Your expenses of financing? A. I don't think so.

Q. Were you to be allowed for the expense of financing, expense of bonds, tools, indemnity and so on — plant? A. Well, now, I can't tell you that, Mr. Moss, but I don't think it allowed any expense for financing.

Q. No. You had no plant, had you? A. No.

Q. You were expecting to get the use of somebody's plant weren't you? A. To a certain extent, yes.

Q. Yes, and your idea of seven and a half per cent included the necessity of getting some plant? A. Yes, undoubtedly.

Q. Included the necessity of raising the money didn't it? A. Well, I can't say as to that. I don't think so.

Q. Well, you would have to raise your own funds, wouldn't you? A. Oh, yes, I would have to raise money.

Q. That is what I mean, you would have to raise your own funds? A. Yes.

Q. You would have to provide your own tools, you would have to take care of your own workmen? A. Yes.

Q. Had you at that time any intention of including your company in that bargain? A. No, sir.

Q. Had your company any plant? A. We had some plant working on the subway. A contract that we had, yes.

Q. Was it capable of doing this kind of work? A. No, sir.

Q. Could it have been enlarged? A. Only added to, that is all.

Q. Yes, if it had been added to, what would have been the expense of the plant that was necessary? A. Well, that would require some figuring. I don't remember now.

Q. Can't you give it to us approximately? A. Well, I suppose two or three hundred thousand dollars, but that is only tentatively.

Q. Was your company a general contracting company? A. Yes, sir.

Q. Did your directors and the gentlemen interested in your company know that you were going to make this personal proposition? A. I don't think so.

Q. You didn't take them into your confidence at all? A. No, sir.

Q. What plans had you in mind about getting the money necessary to carry on the work which you offered to do? A. Well, I had several plans; I thought with that contract, or a fair contract, I could raise the money.

Q. In what way? A. Well, I could borrow it.

Q. What bankers did you expect to use? A. Well, I had no particular ones in mind.

Q. Did you have in mind any of the persons or any of the interests that were represented in your company? A. No, not particularly. My plan was entirely vague as far as money was concerned.

Q. Didn't you expect to go to Vanderlip? A. No, sir, I didn't think of it.

Q. Didn't you expect to go to his bank? A. I hadn't any plans formed.

Q. Hadn't you discussed the probable proposed financial plans with Mr. Shonts? A. Yes, he asked me several times and I said I thought I could raise the money.

Q. Did he ask you how you would? A. No, he didn't ask me how, particularly.

Q. You would have discussed it with somebody, wouldn't you? A. Oh, yes.

Q. Well, now, you are a practical man, Mr. Shonts is a practical man. He was dealing with his board of directors and he was taking into his board of directors a contract drawn up in form to be made with you. Now, wasn't the subject of the financing of this work discussed between you and Mr. Shonts? A. Oh, yes, he asked me if I could raise the money, and I told him yes with the proper contract.

Q. Yes; but wasn't it discussed more than that; weren't methods discussed? A. Oh, yes.

Q. Now, what methods were discussed? A. Well, he said before the contract was signed, I had to assure him that I could raise the money, and I told him I thought I could.

Q. Yes; but he put the contract before his board to be voted upon and he certainly wouldn't do that until he knew how you could raise the money. A. Well, I don't know whether he did that or not.

Q. Did Mr. Shonts offer to supply a plant? A. No, sir.

Q. Did he offer to bring you in contact with people who would provide a plant? A. No, sir.

Q. Did Mr. Shonts know that you would be willing to take that contract if you had to do the seven and one-half per cent? A. No, sir; I never made him any such proposition.

Q. I didn't say that you made a proposition to him, but did he know it? A. Well, I don't know that he knew it.

Q. Didn't you tell him? A. No, sir.

Q. What was the lowest figure that you have mentioned to Mr. Shonts that you could do that work for? A. Fifteen per cent.

Q. Didn't Mr. Shonts know that ten per cent could be written in that contract? A. I don't know, Mr. Moss, that he knew.

Q. Don't you know that ten per cent was talked of in the board of directors as a percentage? A. I don't know anything that was talked of in the board of directors.

Q. Did the fifteen per cent that you wanted to get, include fifteen per cent on the work of sub-contractors? A. Yes, sir; that is what I claimed.

Q. On your own, and on the sub-contractors as well? A. Well, if some sub-contractor was paid a certain amount for doing the work, the fifteen per cent would carry that.

Q. What percentage upon the entire cost of that job could you have made under that arrangement that you had in mind? More than fifteen per cent on the entire cost, couldn't you? A. Do you mean in amount?

Q. Yes. A. Well, that would depend entirely on the amount of the contract.

Q. Yes, but did you have in mind an arrangement where the total amount that you might receive as commission on this contract might have more than fifteen per cent on the cost of it? A. Well, if you take the percentage applying to the sub-contractors.

Q. Yes. A. It would.

Q. Well, how much; that is, what per cent above fifteen could you have made? A. I couldn't have made any more.

Q. What percentage in addition to fifteen per cent could you have made on the total cost? A. I don't think I understand the question. Fifteen per cent is a maximum that was discussed.

Q. Yes. A. And on the total cost of the work.

Q. If you sublet it all at a ten per cent profit, would you have made fifteen per cent on the ten? A. I suppose so; yes.

Q. Well, that would have increased fifteen per cent, wouldn't it? A. Not to me.

Q. Well, but to the Company? A. Yes.

Q. Yes; did the Interborough propose or did Mr. Shonts propose any method by which you might be supplied with a plant? A. With a plant?

Q. Yes. A. No, sir; I had to get my own plant.

Q. Did you know that the Interborough had a plant? A. No.

Q. Did you know that the Interborough had resources and capacities that could be utilized in this work? A. Why, I know they had resources and capacities, but the question of whether —

Q. Did they have tools? A. I don't know that I know.

Q. Didn't you know that they had? A. I knew that they had a company, a construction company, I don't know anything about —

Q. Yes, a construction company, that is. A. Anything about that, about their plants or their tools.

Q. Was there any conversation between you and Mr. Shonts, which took in the possibilities of utilizing that construction company? A. No, sir.

Q. When these objections were made by Mr. McAneny and others to this proposed contract, what did you do about meeting those objections? A. I didn't do anything.

Q. Did you talk it over with Mr. Shonts? A. I don't think I did. I thought it was a matter for the Interborough, not for Mr. Shonts.

Q. What did you figure approximately would be the construction cost of the work upon which the fifteen per cent would be figured? A. As I recall it now, it was anywhere from eleven to fourteen million. I haven't that in my mind as I say it was a long time ago.

Q. Well, it may have been a good deal more than that? A. Yes.

Senator Thompson.— Well, it covered the equipment to run over twenty million? A. I can't tell you, sir.

Q. Well, I think you testified that before. A. Perhaps so, I don't recall it.

Q. The contract as formed and submitted to the Public Service Commission did cover the equipment, didn't it? A. I don't know, but I think it did.

Q. Construction and equipment over the third-tracking also covered the connections and the extensions? A. Yes; covered the extensions.

Q. You say the present third-tracking is costing in the neighborhood of ten millions and that don't cover the connections or the extensions? A. I don't know that I paid any attention to it.

Q. (By Mr. Moss.) Well, did any of the directors of the J. F. Stevens Company speak so to you after they learned that you had made this bid in your own name? Did they talk to you about it? A. I don't recall that any of them ever did.

Q. Didn't Mr. O'Brien talk with you about it? A. He may have, but I don't remember.

Q. Didn't Mr. O'Brien object to your attempting to take a contract individually? A. I don't recall any such objection.

Q. Did any of the directors object to your undertaking to do that? A. Not to my recollection.

Q. Did any of the directors say anything on that subject to you? A. I don't think they did.

Q. Did they ask that the contracts should be given to the company? A. No, sir.

Q. Did you know that they desired that the contracts should be given to the company? A. No, sir.

Q. How did you come to lose this contract? A. Well, I understand that the Board of Estimate wouldn't pass it.

Q. Why wouldn't they pass it? A. I don't know.

Q. Who told you they wouldn't pass it? A. Why, only what I saw in the newspapers — general impression

Q. Didn't you talk with anybody? A. No, sir.

Q. Did you ask Mr. Shonts why the Board of Estimate wouldn't pass it? A. No, sir.

Q. Did you take any interest in it at all? A. No; I just sat back and waited.

Q. Weren't you interested in the contract? A. Why, of course, I was interested.

Q. You wanted it, didn't you? A. I did for a while; yes.

Q. As a matter of fact, Mr.— A. I testified last summer that Mr. Shonts went to Europe. He was gone for a long time, and when he got back, I was in very bad health and I paid no attention to it. I supposed the matter was dead, as it was. Well, later on in the fall, I think it was — the record will show — I heard that it was common gossip that the work was going to be let, and a short

time afterwards I saw Mr. Shonts, and in the course of conversation I told him I had heard that he said it hadn't been let. Then he said to me, "Would you like to consider taking it yet?" And I said, "No." I never cared for it; from that day to this I never exchanged a word with Mr. Shonts or any one else.

Q. You mean to say that you wouldn't care to take it with all the profits that were in it? A. No, I didn't care for it.

Q. Well, if you had been willing to take the job at seven and one-half per cent, fifteen per cent would have been quite a profit, wouldn't it? A. Yes, but I didn't want it.

Q. Why not? A. Well, I had had a bitter experience in contracting. My company failed and I had made a mistake in trying to finance the work myself, and I thought I could carry it through. I lost a small-sized fortune in cash and contracting, and it had kind of broken my spirit and I didn't want any more contracting. I thought it better to stick to my legitimate business of engineering.

Q. Didn't you find that the men who were associated in your company resented your undertaking to handle this privately? A. They didn't express any resentment to me.

Q. Yes, but didn't you find it was so? A. Why, not to my knowledge; no.

Q. Did those gentlemen withdraw their support? A. Which gentlemen?

Q. That were interested in the J. F. Stevens Company? A. As I say, I tried to finance the company until I couldn't do it any longer. I never asked them for their support.

Q. Well, why didn't they support it? A. I don't know.

Q. Didn't they fail to support it when they realized that you had bid for the third-tracking contract in your own name, and not in the name of the company? A. They didn't support it, Mr. Moss; I don't know what the reason was.

Senator Thompson.—Who were associated with you? A. J. O'Brien and Bradley.

Q. (By Mr. Moss.) Well, William R. Joyce was vice-president of the National Surety? A. Yes, sir; he was one.

Q. He was one of them. Those men had plenty of money, didn't they? A. Well, I don't know.

Q. It wasn't a bad contract, was it, that they failed on? A. Which contract?

Q. The contract that your company failed on; that wasn't a bad contract was it? A. Well, I thought it was a good contract.

Q. It was a contract for contractors to stand by, wasn't it? A. I thought so.

Q. Had these men made any investment in the company at all? A. In the Stevens Company?

Q. Yes. A. They had a certain amount of stock; yes.

Q. They had put their money into it to an extent, hadn't they? A. Yes, sir.

Q. Didn't they let this company fail out of resentment to you for some reason? A. Well, that may be, I can't say.

Q. That may be; now, just let us see what resentment they might have against you? A. Well, I couldn't say. I can't enter into their mind. They didn't express any to me because of any contract.

Q. Why did you say they may have had some resentment? A. Why, anything is possible. I don't know what is in another man's mind.

Q. Yes, but here you have it now that in this profitable contract which your company had, these men who have established financial ability, let it fail? A. Yes, that is a fact.

Q. Now, they must have had some motive for it? A. And I am paying the debts yet.

Q. You are paying the debts? A. Yes, personally.

Q. How much? A. Well, I was obligated for a note, that was for fifty thousand dollars. I am paying that in addition to all I lost myself. The note is nearly paid.

Q. How much did you lose, if you care to state? A. Oh, one hundred fifty to sixty or seventy thousand dollars, I couldn't tell you without going into my books.

Q. Now, why would these men punish you, Mr. Stevens? A. I don't know.

Q. Let me take each one of these directors: John F. Stevens, president — well you are accounting for yourself, Mr. Stevens — Charles B. Eddy, vice-president, who was he? A. Why, he is a gentleman I have known for some time, but I don't think he held any great amount of responsibility.

Q. I know, but what were his connections, his financial connections? A. He was supposed to be a friend of Mr. Bradley. I have known Mr. Bradley for a great many years.

Q. Is he of the firm of Eddy, Flint & Company? A. I don't think so.

Q. Well, wasn't he a representative of Brady? A. I don't think so. I think Brady represented himself.

Q. Wasn't he associated, we will put it that way? A. I never heard of it as a fact, I don't know.

Q. Edward P. Shannon, secretary, who is he? A. He was my secretary, he has been with me for years.

Q. He represented you? Or, at least, he did the writing for you? A. Oh, yes, in a clerical capacity.

Q. Well, we have already discussed Morgan and Judge O'Brien, Junior; well he represented his father, didn't he? A. Yes.

Q. And is in the firm with his father now? A. Well, I think he was at the time; I haven't seen him for a long time. I don't know where he is.

Q. The last Brady that you discussed is a son of Anthony Brady, isn't he? A. Yes, sir.

Q. And William R. Joyce we have already mentioned? Who was Lytleton Fox? A. He was a son-in-law of Judge O'Brien.

Q. And is in the law firm with Judge O'Brien? A. I think so.

Q. Who was Philip W. Henry? A. Philip W. Henry was consulting engineer down around Broad street. I think he is a nephew of Mr. Vanderlip; I am not sure of that.

Q. A nephew of Mr. Vanderlip? A. Some relation, I don't know what.

Q. Didn't he represent Mr. Vanderlip? A. No; Mr. Vanderlip had no interest, as I know, in the concern in any way at any time.

Q. How much stock did Henry have, do you know? A. I couldn't tell you now. Enough to qualify him as a director.

Q. Did Mr. Henry ever furnish any money? A. No, sir.

Q. For the company? Did you have any knowledge or relation with the United States Realty and Improvement Company? A. What?

Q. United States Realty and Improvement Company? A. In connection with them?

Q. Yes. A. No, sir.

Q. Any relation with them at all? A. No.

Q. Interested in any piece of business with them? A. No.

Q. Did they have to finance anything for you? A. Did they what?

Q. Did they have to finance anything for you? A. No, sir.

Q. Did you have any interest in or relation with the Bradley Company? A. No, sir.

Q. You were entirely separated from them? A. Entirely separated; I had no connection in that way.

Q. Now, can you state any more definitely, why you wouldn't take that elevated railroad contract, at fifteen per cent, if you could have got it? A. Well, I tell you; I was heartsick and broken over my failure and I was sick physically.

Q. Yes, I know. A. I didn't want any of that on my hands.

Q. Yes, you were feeling bad because these men had turned against you, and let you go down, weren't you? A. No, I haven't any hard feelings against them at all.

Q. Well, you were feeling bad because these men had allowed the failure of the firm? A. I was feeling bad because I had made a mess of it, of the company.

Q. Well, did they permit you to make a mess? A. H'm?

Q. Did they permit you to make a mess? A. Well, they let the company fail, that is all I can say.

Q. When this company with these directors took the bid for that section in the Bronx, did they know that the proposition you had made for third-tracking was in your own name? A. I don't think so. I think when we took that contract, it was long before the third-tracking came up.

Q. Yes, well, when that contract in the Bronx was taken, did these directors vote on it? A. No, sir.

Q. Did they permit it to be done, knowingly? A. Well, I took the contract, and advised them afterwards, and no objection was made.

Q. Well, after you had taken the contract for the company, they didn't object to it, did they? A. No, sir.

Q. So the contract went on and they were bound to it as directors because they knew it, and let it go on, isn't that so? A. They knew it after it was consummated, and didn't object.

Q. Yes, it went on for a year with their knowledge, didn't it? A. Yes, sir.

Q. That is sufficient in law to bind the corporation? A. Yes, sir.

Q. And how was the money raised for the year, that you ran on? A. We had a certain amount paid in for the stock.

Q. Yes. A. Into the company's treasury at my order. Then, when I needed more money, I advanced the cash myself and on company notes, and then I borrowed fifty thousand dollars in the ocmpany's name. Then I endorsed the note at the bank. That was gone when the company failed.

Q. How much more money would you have needed to carry that contract through to success, that Bronx contract? A. Well, I think my statement at the time was one hundred to one hundred and fifty thousand dollars.

Q. A hundred and fifty thousand dollars would have carried it through? A. Why, I think so; yes.

Q. Why, the contract was two million, two hundred and fifty-three thousand dollars. A. Yes.

Q. And it only needed one hundred and fifty thousand dollars? A. But the plant was on when we got to a point where our work was nearly paying for itself.

Q. Yes. A. I needed not a great deal more plant, a little working capital, that was all.

Q. How much profit did you figure was in that contract? A. Why, I figured there ought to be ten per cent.

Q. That would have been two hundred and twenty-five thousand dollars? A. Yes, sir.

Q. And these financial magnates, if they had raised one hundred and fifty thousand dollars, could have had the two hundred and twenty-five thousand instead of that; you lost what you put in? A. Well, they might have thought that I was mistaken on the profits, I don't know.

Q. But they never said that to you, did they? A. Well, some of them questioned it. They thought there wasn't any amount of profit.

Q. Did any of these gentlemen ever give you a reason for letting the thing fail? A. Well, the only reason I ever heard given was

that they thought there wasn't any amount of profit in the contract.

Senator Thompson.— Well, what do you say to that, was there? A. That was my opinion.

Q. Is that your opinion now? A. Yes, sir; my opinion. If I could have handled it, I would have made two or three hundred thousand dollars.

Q. Well, if you had had one hundred and fifty thousand dollars of money at that time for your extra plant, and your working capital that you would have pursued the contract to a finish and proved that? A. That is what I intended to do.

Q. That was your opinion then, and is your opinion now? A. That is my opinion.

Q. (By Mr. Moss.) Which of these directors thought there wasn't any profit? A. Well, the general discussion — I don't know.

Q. You can't specify? A. I can't specify. It is a long time ago.

Q. Well, you looked on it as an excuse didn't you? A. Maybe. I tell you, Mr. Moss, I wasn't in mental shape at that time to go — to look on anything, you know.

Q. Yes, I understand. But in all of these discussions wasn't reference made at some time to the contract you had undertaken to get through for third-tracking? A. I don't recall that it was brought up at all.

Q. If Shonts had got that thing through the board of directors with ten per cent in it, you would have lived up to it, wouldn't you? A. Lived up to what?

Q. You would have taken it at ten per cent? A. I expect I would.

Q. Had you given him authority to negotiate it at ten per cent? A. No, sir. I thought I was sharp, I was trying to trade, get all I could.

Q. Yes, but inasmuch as you would have taken it at seven and a half, I suppose you would have taken it at ten if you had to? A. Undoubtedly.

Q. Well, you say you were shopping, but you weren't coming in direct contact with the directors of the Interborough, were you? A. No, sir.

Q. Who was? A. I don't know.

Q. Wasn't it Mr. Shonts? A. Must have been, I don't know.

Q. You expected Mr. Shonts to shop for you, didn't you? A. I expected to trade with him. He could do his trading with whom he liked.

Q. I know, but you expected so far as putting the figures in that contract, he would do the shopping? A. Yes, I don't know that I expected anything as I say I was trading with him.

Q. I know, but he had authority? What proportion of the financial interest in this J. F. Stevens Company was yours? A. Originally, Mr. Brady and myself divided fifty thousand each, half and half. And then as I understand it, he let some of his friends whom you have named here have a certain amount of the stock, and I did the same.

Q. Yes, how much of your fifty thousand did you give up, fifty per cent.? A. Oh, I think probably, not quite a half, I think thirty-five thousand.

Q. So you retained about thirty-five per cent? A. Yes.

Q. Yes. A. The authorized capital as I remember it was two millions.

Q. What conversation did you have with Mr. Shonts as to what would be done with the money you would receive as percentage upon the third-tracking contract? A. Why, none in particular.

Q. Well, what engineer? A. Well, the contract was never got to a finality and there was no arrangements made about it.

Q. No, but there was a discussion there, a tentative understanding? A. No, not with Mr. Shonts. I had no discussion.

Q. Your interests were really in Mr. Shonts' hands weren't they? A. Well, that is as to the amount of compensation they were in his hands in a —

Q. Yes, as to the amount of the compensation they were in his hands? No, no, not at all.

Q. Well, what did you mean when you started to say that they — A. I gave him the percentage that I would want for doing it.

Q. Exactly, well, now, you would have been willing to accept seven and a half per cent? A. I think I would, yes.

Q. Yes, and supposing he could have gotten the board of directors to hand over ten per cent, you would have been willing that the difference between seven and a half and ten per cent could be used where it was necessary, if Mr. Shonts found that it was necessary? A. No, sir. No, sir; I never told Mr. Shonts that I would take the work for ten per cent.

Q. I didn't say that you told him, I said that you would be willing. A. Why, I probably would have been willing to take the work for that.

Q. Yes, you would be willing, you would have trusted Mr. Shonts, wouldn't you? A. Trust him how?

Q. With anything that he thought was right. A. No, sir; he might have thought one per cent was right.

Q. I don't mean as to the percentage to be put into the contract, but you yere satisfied with seven and a half per cent. That would have given you sufficient profit, but if Mr. Shonts found it was necessary to raise some more money than seven and one-half per cent you would have been perfectly willing for him to do it, wouldn't you? A. Not through me, no.

Q. You wouldn't have examined him, would you? A. Well, I would have fixed ten per cent where the contract would have been made.

Q. So long as you got the seven and a half per cent? A. No; whatever the contract read, I should get.

Q. Well, suppose there were necessary disbursements to be made, you would have trusted him, wouldn't you? A. No.

Q. Did you ever say that you wouldn't? A. No, sir; I never said I would.

Q. Did you ever tell him that you had confidence in him? A. Why, I don't think so; no.

Q. Now, you had in your mind fifteen per cent? A. Yes.

Q. You had in your mind seven and a half per cent that you would take if you had to? A. Well, I say now, looking back at it now since I would have taken that.

Q. Yes, you would have taken seven and a half per cent and the contract went before the board of directors in Mr. Shonts' hands with nine per cent? A. Well, I don't know that.

Q. Well, you never saw any contract in which the figures were brought out, did you? A. No, sir.

Q. You trusted Mr. Shonts that he would put the proposition before the board of directors in the right way, didn't you? A. They might have improved the contract, but I never would have executed it unless the percentages would have been satisfactory to me.

Q. Of course, but seven and one-half would have been satisfactory? A. It might; I don't know.

Q. You have been in business long enough, Mr. Stevens, at least in the city of New York, to know that a great many people are interested in the putting through of a contract. A. Well —

Q. And sometimes interested in ways that won't bear printing? A. I don't know of that, Mr. Moss.

Q. What about the fifteen million dollar contract, likely to be some people interested in it, isn't that so? A. Well, I don't know, I can't say.

Q. Now, weren't you willing to trust Mr. Shonts with any of the details that might be necessary to work out this contract which you had taken in your own name? A. No, sir.

Q. Well, you did leave them in his hand. A. I would have to be satisfied myself.

Q. I know, but you left it in his hands to a very large degree, didn't you? A. Left it in his hands, how?

Q. Well, by letting him take a contract into the board of directors — A. I didn't know that he took the contract —

Q. — and trade with them on the percentage. A. I didn't know he took the contract into the Board of Directors and trade with them.

Q. You never heard of that until to-day? A. No, sir; I don't think so. I don't recall now.

Q. Now, Mr. Shonts in his testimony he said, giving a conversation with Mr. Lane, he said to Mr. Lane: "The only obligations or commitments was to Mr. Stevens. I had made them to him and I felt I should be backed up in them." Now, what commitments and obligations had Mr. Shonts made to you? A. All the commitments I know of was that he asked me if I would take the work and practically promised me that if it was let I could have it, if we could agree to a percentage.

Q. He said that Mr. Stevens had gone on to say he was willing to turn over his construction contract to other people. A. Never heard of it.

Q. Didn't you ever say that to Mr. Shonts? A. No, sir.

Q. Well, now, let's see. I don't want to get you and Mr. Shonts on contrary testimony, unless we understand it. A. Well —

Q. "Chairman Thompson to Mr. Shonts: Q. You did tell Mr. Lane you had made certain commitments and obligations to Mr. Stevens? A. Yes, sir; and Mr. Stevens had gone on to say he was willing to turn over his construction contract to other people, and give us his personal attention; and I was anxious for that."

A. No, sir, I never made any such arrangement.

Q. Didn't you say or agree with Mr. Shonts that if you received that contract you would sublet it to other persons? A. No, sir; I certainly did not; decidedly not.

Q. That you'd sublet your own private contract — that is what I am talking about. A. Yes, I understand it.

Q. To other persons? A. No, sir.

Q. You had no plant to do it yourself? A. Well, I could have begun the plant.

Q. But you hadn't, had you? A. No.

Q. And you hadn't consulted with your own company about it? A. No, sir.

Q. And weren't you taking this in your own name in order that there might be a possibility of subletting which you might find difficult in doing with your corporation? A. No, sir.

Senator Thompson.— You never had any such talk as that? In substance, anything like that in substance? A. No, sir; no, sir. The only idea I had in sub-contracting was that it might be to those men who were men skilled in steel erection.

Senator Thompson.— The question is, did you ever have any such conversation as that with Mr. Shonts? A. I don't recall.

Senator Thompson.— Did you ever have any? A. No, I don't recall that I had any such conversation.

Senator Thompson.— The question is, whether you had any conversation like that or anything in substance like that? A. No, sir.

Mr. Quackenbush.— Mr. Chairman, may I suggest to you that my understanding of what Mr. Shonts said about that was that he understood that Mr. Stevens would make arrangements to take care of the Stevens Construction Company's contract.

Senator Thompson.— No, he (Moss) is reading the record correctly.

Mr. Quackenbush.— That was my understanding.

Senator Thompson.— You are wrong then.

Mr. Quackenbush.— I only said that because Mr. Moss said he didn't want to have any confliction.

Mr. Moss.— I think you are right, but I am glad to have you attempt to straighten us out whenever you think we are not right, and I always appreciate your motive.

Mr. Quackenbush.— Thank you, sir.

Mr. Moss.— Well, I suggest, Mr. Chairman, that as you have got to adjourn at 4 o'clock, you adjourn at this point; and it may be possible, in reflecting over the matter during the night or during the evening Mr. Stevens may recall something of this conversation. Will you direct the witness to return to-morrow?

Mr. Stevens.— Will you read that again? I would like to have that in my mind. I don't recall anything now.

Senator Thompson.— Well, then, you will be back to-morrow at 11. Mr. Stevens will appear to-morrow at 11.

I want to subpoena, to-night, the New York Telephone Company for whatever record they have in reference to wire-tapping, if they know anything about it.

We will suspend until to-morrow morning at 11 o'clock.

MAY 10, 1916

MORNING SESSION.

The Committee came to order at 11 o'clock A. M., Senator Thompson presiding.

Senator Thompson.— The Counsel announces that it is intended to pursue the question of the surplus power of the power houses of the railroads here, as we started to take up yesterday. We find that we cannot pursue that this morning on account of the absence of Mr. Gossler, who is expected to be here tomorrow. The Committee also intended to continue that question with Mr. Shonts but we have excused him until tomorrow on account of waiting for Mr. Gossler.

As to the telephone matter, Mr. Swayze and Mr. Russell have been in conference with us this morning and we have concluded to let that matter go over until tomorrow morning, on account of further conferences that we may have during the day.

We had also arranged this morning to take up some questions with the Bridge Commissioner, but the Bridge Commissioner we have been unable to get. We supposed that Mr. Berwind, one of the Directors of the Interborough who was notified, would be here this morning, but it seems that the notice has not got to him; but he will be here at half-past two.

In other words, the Committee finds it has taken on too much business this morning, and will consequently now suspend until 2:30.

Session of Wednesday afternoon, May 10, 1916.

COMMISSIONER J. H. KRACKE was recalled as a witness and testified as follows:

Q. (By Mr. Moss.) Have you a copy of that letter that you wrote me? A. I think I have it, Mr. Moss. You mean the Williams letter?

Q. The letter that you wrote me yesterday. A. Yes, I have it.

(Hands letter to Moss.)

Q. You are Commissioner of Bridges of the City of New York? A. I am.

Q. I want to direct your attention — ask you some questions about the Center Street Loop and its relation to the Brooklyn Bridge, but before I get into the subject very deep, may I ask this matter of general interest, how long is that monstrosity that crosses Park Row up there by the World Building, ends in the Park there, how long is that going to continue, have you any idea? A. As soon as the Center Street Loop is put into operation then that head house train shed can be taken down and normal conditions once more prevail there.

Q. Is that likely to occur within any reasonable time? Within a year, say? A. Much of it depends upon the railroad company meeting the demands of the city and making use of the Loop connection between the Brooklyn Bridge and the Center Street Loop under this Municipal Building.

Q. The Center Street Loop was constructed by the city some years ago, wasn't it? A. It was.

Q. And wasn't it intended to connect the three bridges — the Williamsburg, the Manhattan and the Brooklyn Bridge? A. It was in loop operation.

Q. So that a train might go right around the Loop? A. Yes.

Q. And make connections between the terminals of these bridges? A. That was the original purpose.

Q. The Williamsburg Bridge is now connected with the station underneath this building, isn't it? A. It is.

Q. And so is the Manhattan Bridge? A. And the Manhattan Bridge also.

Q. The cars are coming across those bridges and are coming into the station down stairs as a terminal, are they not? A. As a terminal.

Q. But was not it the original plan to have that station down there a way station? A. In the form of the loop operation?

Q. Yes. A. That simply to be a station on the way?

Q. Yes, on the way with full trains running by. A. Yes.

Q. So that any subway train, practically, that was upon the tracks would pass that station down stairs as it would any other station. Ten-car trains, I think, would be accommodated? A. that was the original plan.

Q. And wasn't the congestion upon the Brooklyn Bridge one of the arguments that was advanced for the construction of that loop? A. It was.

Q. The Brooklyn Bridge is not effectively connected with it now, is it? A. It is not.

Q. But there is a physical connection established is there not, which a railroad company could use? A. There is the tunnel built at the expense to the city of seven or eight hundred thousand dollars — a total expense.

Q. There is a tunnel which runs from the basement of this building — the cellar of this building — over to the bridge? A. Over to the bridge.

Q. And connecting with the railroad tracks on the bridge, isn't there? A. Connecting there but there are no tracks laid as yet in the tunnel.

Q. And that is the improvement which you say cost about eight hundred thousand dollars? A. Between seven and eight hundred thousand dollars.

Q. That was spent in construction of the tunnel and in the acquisition of real estate, was it not? A. It was.

Q. And there are bonds out for the expense — bonds issued for the expense? A. There were bonds issued to pay for that work.

Q. When was that work completed? A. About a year — a little over a year ago.

Q. And are you aware of any negotiations that have been pending during that year to secure the use of that improvement? A. A little more than a year ago I had a conference with Col. Williams and some of his associates, I think particularly Mr. Yeomans and Mr. Minden, and among other subjects that we talked about I called his attention to this Loop between the Brooklyn Bridge and the Municipal Building and said that there had been a request made by Jacobs & Davis on the Public Service Commission to allow the installation of ducts in that loop or in that tunnel which is the loop operation, and that I had refused permission to install ducts in that tunnel because of the clear definition in the law which permitted, authorized and directed the construction of this tunnel.

Q. That is, Chapter 703 and Chapters 89 and 90 of the laws of 1901 and 1907, resp.? A. It is.

And those chapters of the laws of 1901 and 1907 specifically stated and made it obligatory upon the Bridge Commissioner to receive a rental from an operator using that tunnel equivalent to the interest paid by the city for the bonds issued for that construction work plus one per cent. for amortization.

Q. Do you know how much that would amount to a year approximately? A. In the laws of 1901 I think it is spoken of as interest—seven and a half per cent. If the bonds were sold at that rate it would be three and a half per cent. plus one per cent. for amortization or a total of four and a half per cent. on the total cost of the contract.

Q. Now, when you say the contract cost of the contract, do you mean the cost of the entire loop? A. No, I mean just the cost of construction—just the cost of construction.

Senator Lawson.— Of the subway connection? A. Of the subway connection, which is about five hundred thousand dollars more.

Mr. Moss.— Proceed, Mr. Kracke.

A. Then the question of the rental to include the acquirement of the property is one that is another section of the law and that would perhaps call for a rental on the basis of the right of easement, that was all discussed with Col. Williams and he said that it was the opinion of his company that this law had been set aside by other and more recent legislation and that his company was not prepared to meet this requirement. I called his attention to the sections of the law of 1901 and 1907, and Mr. Yeomans, the Attorney, stated that he would look into it and confer with the Corporation Counsel as to whether there had been any subsequent legislation that had set that aside.

Senator Lawson.— How long ago was that? A. A little over a year ago.

Senator Lawson.— And no further conference has been had between you and the B. R. T. as the operator since that time? A. In relation to this?

Q. Yes. A. The acting Chief Engineer of the Department of Bridges has in the last three or four months conferred with the

Chief Engineer of the B. R. T. and in relation to operation through that tunnel this was brought about because the signal company—Federal Signal Company—asked for permission to install their system of signals and allowed by the Public Service Commission to be installed on that bridge for the B. R. T. and I did not want to give the approval to the Federal Signal Company to install the signals that would go into the tunnel, until the railroad company had met the requirements of the law because a permission given to the signal company might be construed as a first step to let the railroad company go in there without having met the requirements of the law.

Q. (By Mr. Moss) Well, practically you say to Col. Williams, "The law requires me to exact from you a rental for your use of this connection which we have built—which the city has built for you?" A. I so have stated, yes.

Q. And Col. Williams says, "I don't want to pay anything for it?" A. That is what he—

Q. Therefore he doesn't use it? A. He doesn't use it, therefore.

Q. There is no operator in sight but he; no one that can compete with him? A. No.

Q. You were satisfied with him—I mean the B. R. T.? A. With the B. R. T.?

Q. Well, then, the situation is that the city, having provided a loop—I think the expenditure for the loop is about fourteen million dollars— A. Yes.

Q. The city having provided a loop at an expense of fourteen million dollars, which is bearing interest secured by bonds, of course, the loop being intended to relieve the congestion of the bridges, the system fails of its purpose because the man who ought to operate it and who controls the southern end of it is not willing to pay anything for it? A. In so far as it relates to this connection between the Brooklyn Bridge and the Municipal Building, that is correct.

Q. But this connection is necessary to make a Loop of it. A. To make it complete.

Q. Make a complete loop of it?

Senator Lawson.— This connection is the key to the relief of the congestion as originally intended? A. It is.

Senator Lawson.— And is it the idea—are you to have this Committee to understand that this subway connection cost the city now, in interest, ninety-six dollars per day and under the law, as you see it, you have requested the operator that he must pay at least the cost of that interest plus one per cent for amortization? A. Yes.

Senator Lawson.— And that he refuses to do?

Mr. Moss.— Well, didn't you have a similar situation or was not there a similar situation with reference to the use of the Loop —the rest of the Loop—within the last few years? A. Not under my administration.

Q. But wasn't it so under the former administration? The Loop remained idle because as it stood it would not pay the B. R. T. to run trains over the Williamsburg Bridge, that it meant nothing to them, no return to them? A. Well, that was all put into effect and in operation when I came.

Q. Yes, but there was a delay of two or three years, wasn't there? A. I so understand.

Q. And of course while that delay continued there was a loss to the city of the interest upon those bonds entirely—the Loop was absolutely discussed? A. Nods head.

Q. Do you know how much the Center Street Loop loses now per year upon original investment? A. That I do not know.

Q. Haven't you that figured out? A. No, no.

Q. Does the Company pay anything now? Does the B. R. T. pay anything now for its use of the Loop? A. It does not.

Mr. Moss.— Mr. Childs, if you have any information you may give it to us.

Mr. Kracke.— The question that you asked just now, whether we had figures as to the loss made to the city of the Center Street Loop, I wish to make it clear here to this Committee that the Center Street Loop was not built under the direction of the Bridge Commissioner or under the direction of the Bridge Department.

Mr. Moss.— We understand that.

Mr. Kracke.—Only this particular connection between the Brooklyn Bridge and the Municipal Building, because it is Brooklyn Bridge property.

Mr. Moss.— Yes.

Mr. Kracke.—And that Municipal Building, for that matter, is Brooklyn Bridge property, also.

Mr. Moss.— Yes.

Mr. Kracke.— But with the Center Street Loop otherwise, and its connection with the Manhattan Bridge and Williamsburg Bridge, it had nothing to do with the Bridge Department and was not constructed under the Bridge Commissioners.

Mr. Moss.— That we understand, but I had the information that you had some figures which would show the loss the city had sustained in the years past through the failure to use the Loop. A. I shall be very glad to have those figures collected and prepared for you and send them to you within a very short time.

Q. Well, we would like to have them at your convenience, and also what the losses under the present operation are. A. Yes.

Q. First, under the situation when there was no use made of the Loop at all, and then second, when the losses under the half-way use of it that we now have. A. As it stands right up to the present day?

Q. Yes. A. We will prepare that for you.

Senator Lawson.— The Commissioner, as I understand it, wants the Committee to understand that this subway connection is distinctly the Bridge property or under the jurisdiction of the Bridge exclusive of the Loop itself.

Mr. Kracke.— It is.

Mr. Moss.— Is that power of use exclusive of the control of the Public Service Commission? A. Yes. This was built under special act of the legislature and built and controlled by the Bridge Commissioner.

Q. That relates particularly to the new improvement that cost eight hundred thousand dollars? A. It does, and that only.

Senator Lawson.— Mr. Commissioner, let me ask you this: Do we understand that the B. R. T. pays absolutely nothing for the use of the Loop at the present time, exclusive and notwithstanding this subway connection—the Loop itself, outside of the subway connection? A. Well, the Loop itself, outside of this connection here, is part of the general subway system and not—

Senator Lawson.— Well, let me make it more clear so that we may understand it as a Committee. Does the B. R. T. pay anything for the use of that part of its tracks or of the city's tracks running from Essex Street to the Chambers Street Terminal under this building? A. That again, is part of the dual subway contract and has been figured out in that, and is part of it.

Senator Lawson.— Then they pay nothing except the city shares after the railroad receives back a certain amount of its operating expenses? A. As to the exact terms, there I am not familiar.

Q. (By Mr. Moss) You have no power, nor has the Public Service Commission, to compel the B. R. T. to use this improvement that has been constructed, am I right? A. I have no power.

Q. And you don't know of any power to compel the use of this improvement? A. I know of no power. About a year ago I invited Col. Howard to meet me and we went through this tunnel — went down stairs in this building here and walked through this completed tunnel and I asked him to give it some study to see how we could put to use this idle tunnel that has cost the people —

Mr. Moss.— Nearly a million dollars.

Mr. Kracke.— Nearly a million dollars — eight hundred thousand dollars—about eight hundred thousand dollars; that it had been built for a purpose and a good purpose and it ought to be put to work. I felt keenly that it was idle and also that the taxpayers were losing the use of that money they had to pay the interest while it laid idle and it was not working and likewise they were inconvenienced in having to go back and forth to cars in the old way when they could be served much more conveniently if this

Loop operation was put into effect as it was originally intended to be.

Q. Well, have you any opinion as to whether the Public Commission could compel the use of that improvement by the B. R. T. by an order? A. I am of the opinion that if the Public Service Commission would make a study, as this is a problem that relates to the study of traffic and distribution of transportation facilities that will meet the demands of traffic, and if they were asked to make such a study and upon finding that it would contribute towards the easing of congested conditions and likewise was a feasible and practical thing to do from a traffic standpoint that it is possible — and here I am making a suggestion that I am not sure of as to law or as to power of the Public Service Commission, but I do think that they could perhaps be a very persuasive power to have that Company see it the way that it ought to be seen.

Q. I understand we will have you either to put that up to the Public Commission or suggest it to them. A. As I have told you, Col. Howard and I went through this tunnel.

Q. I know, but have you had some conference or haven't your assistants had some conferences with Public Service officials upon that very subject? A. Well, we have to confer from time to time.

Q. And it has been suggested to the Public Service people, if they would study the question and put their persuasive powers upon the B. R. T. something might be accomplished, isn't that so? A. That has been done.

Q. That has been done but you haven't heard of any result thus far? A. Well, I take it they have it under advisement and under consideration.

Q. How long has it been under advisement, do you think? A. Well, I stated that Col. Howard and I went through the tunnel —

Q. That was a year ago? A. That was a year ago.

Q. But we make no headway toward the getting of that unsightly structure off Park Row until this problem is solved, do we? A. No, you do not, and just as soon as it is solved, just as soon as this Loop is in operation that head house must come down, and under the section of the law, I think it is under the law of 1907 if it isn't taken down any taxpayer may begin a suit so specially des-

ignated and nominated in the law, may begin a suit compelling the city to take it down.

Q. Have you had any conferences with the B. R. T. officials as to the running of trains over the Brooklyn Bridge in any way?

Senator Lawson.— In connection with the subway?

Mr. Moss.— In connection with the subway.

Mr. Kracke.— Yes, that conference that I spoke of which occurred a little over a year ago and then one more recently in a letter that I wrote to Col. Williams under date of April seventeenth. If you wish me to — the letter isn't very long —

Senator Lawson.— Read the letter into the record. A. I wrote to Col. Williams under date of April fourteenth instead of April seventeenth:

> "I have not heard recently from your Company or from you with reference to the operation of the subway connection between the Chambers Street Station, Center Street Loop and the Brooklyn Bridge.
>
> "The Center Street Loop was authorized by the city in order to connect the Manhattan end of the East River Bridge and to provide continuous circulatory operation as a betterment over operation in the congested terminals.
>
> "Your Company operates all trains in the Center Street Loop and all trains on the Brooklyn Bridge; in consequence your Company alone can operate the sub-way connection in question which unite the elevated tracks on the bridge with the sub-way tracks in the Loop.
>
> "Will you advise me as to any proposal which your Company is prepared to make for the operation of this section?"

and under date of April 17th Col. Williams replied as follows:

> "Dear Sir:
>
> "I have yours of the 14th inst. asking whether there is any proposal which the New York Consolidated Railroad Company is prepared to make for the operation of the sub-way connection between the Brooklyn Bridge and the Center Street Loop.

"In reply I would say that there would seem to be no advantage in using this connection unless we could operate our new steel cars over the Brooklyn Bridge and through the Loop.

"Your department has heretofore forbidden the operation of cars of the present type in train-lengths exceeding six cars. These would be equivalent to four of the new longer steel cars in passenger capacity.

"If in your judgment, trains of at least six of the new steel cars can be operated safely over the Brooklyn Bridge we could then consider the use of the connection.

"Such operation would not be possible, however, prior to the completion of the Fulton Street third-tracking.

"(Signed) COL. WILLIAMS."

Q. Well, now you don't know when the Fulton Street third-tracking will be completed, of course? A. I do not.

Q. You can't tell that. Supposing you should spend eight million dollars — I have seen that figure mentioned — supposing you should spend eight million dollars in improving the Brooklyn Bridge so it would carry heavy trains you have no certitude that when that expenditure has been made the Company will use the Bridge? A. Under the reservation made by Col. Williams, he is not prepared to use the Bridge under any circumstances until he has completed his third tracking which is some time off —

Q. Well, it would mean a complete change of equipment, wouldn't it? A. Yes.

Under advisement from the Department of Bridges, in 1913, I think, a chart was sent to the Public Service Commission notifying them that among other information as to the type of cars and the number of cars that could be sent across the different East River bridges the information was given that if the new type steel cars — 67 ft. cars, 10 ft. wide — trains of four cars of the new type could be sent across the Brooklyn Bridge. That information has been officially before the Public Service Commission and of course —

Q. Well, those would be all motor cars, wouldn't they? A. They would.

Q. Necessary to use all motor cars in order to overcome the grades, isn't it? A. Yes.

Q. And that would conflict with the equipment on the other side, wouldn't it, to have the six car trains — old-fashioned six-car trains? A. I suppose it would.

Q. And it wouldn't increase the capacity anyway? A. Well, according to Col. Williams' own letter here, the four-car trains of the new type would be equal to the six-car trains of the present type.

Q. Exactly the same thing? A. They will.

Q. There is nothing in prospect by which the public will either be able to use this new improvement or to get any relief from the conditions of the Brooklyn Bridge? A. There is nothing in sight at the present time unless the railroad company is made to see the necessity of using facilities provided by the city in the construction of this Loop and takes it off under the conditions laid down by this act of the legislature which is mandatory.

Q. Well, were not these conditions taken into consideration before the eight hundred thousand dollar approach was undertaken? A. So far as I am able to learn I have been studying the records and reports of the discussions had in the earlier days — there was a discussion between the city and the railroad company in relation to the construction of this tunnel and their admission — their statement that this would meet the requirements necessary to relieve the congestion in the Brooklyn Bridge; but there is nothing contained in any of the reports that I have seen or that I have been able to find binding on the railroad company to be the operator upon these conditions.

Q. Well, then, the city started out through some officials to build this improvement for the benefit of the B. R. T., spent their money building this improvement without getting any promise by the B. R. T. to operate it when it was finished? A. Without having any binding —

Senator Lawson.— Well, might that not be allied to any part of the dual subway contract that Col. Williams' company was a party to? A. That I am not so familiar with, but I am thoroughly familiar with this subject.

Senator Lawson.— But Commissioner, was not this subway connection in part of the dual subway contract by which Col. Williams' company was a party, that said when completed they would operate it? It is a part of the dual subway system, is it not? A. No, it has not been routed as a part of the dual subway. We have purposely held off from that part, not to have it routed as part of the dual subway system because they routed Williamsburg Bridge as part of the dual subway system and send the elevated cars across the Williamsburg Bridge and into the Center Street Loop and the moment that was done they ceased paying the tolls.

Senator Lawson.— Yes. A. And the city is the loser to-day by over one hundred and fifty thousand dollars from the B. R. T. and we have begun suit against the B. R. T. for their non-payment of those tolls over the Williamsburg Bridge.

Q. (By Mr. Moss) Who was Bridge Commissioner when this improvement was authorized? A. Mr. O'Keefe.

Q. And you found no evidences of any agreement between the city authorities and the B. R. T. for the construction of the improvement, the approach and the use of the approach by the B. R. T.? A. I found no evidence of any binding agreement or contract whereby the railroad company was obligated to take this tunnel when it was completed or to pay anything for it.

Q. Well, did you find any memorandum of any such agreement? A. No, I did not.

Q. Are you of the opinion — I am asking you as Bridge Commissioner in an impersonal way — are you of the opinion that improvement of this sort which can be used only by one person ought not to be undertaken without an agreement binding, for the construction of the improvement by the city authorities, and the use of that improvement when the city has constructed it? A. I hesitate to reply to that question because I do not want to criticize those that were in this work preceding my coming into it but I will answer it in this way: That were I conducting a private operation I would see to it that I had a bona fide agreement before I went into any expenditure of money.

Q. And the result of the contrary course leaves you and the city in the hole that you have described? A. It does.

Q. And leaves us contemplating the situation, where the city has spent millions of dollars for a carefully contemplated improvement, and are balked at the end of it by a private concern which is unwilling to pay what you believe is the proper price? A. That is the exact situation.

Senator Lawson.— Let us term that a public utility corporation instead of a private concern.

Q. (By Mr. Moss) From a memorandum I have the construction started in 1908.

Senator Lawson.— That is only recently finished, isn't it?

Mr. Moss.— The contract was dated July 8, 1908.

Mr. Schuster.— That is the widening —

Mr. Moss.— That is the widening of the road was on the Manhattan approaches of the Bridge. And the rental that you speak of is fixed by statute, is it not? A. It is.

Q. I would like to have you, in conclusion, tell the efforts that you have made to collect money from the B. R. T. — tolls from the B. R. T. for its use of these improvements — the different birdges.

Senator Lawson.— Have you that all on the record?

Mr. Moss.— Have you got that on the record? Alright.

Senator Lawson.— We have that all on the record?

Mr. Kracke.— I would be very willing to give it to you but you have it on the record.

Senator Lawson.— And as a matter of fact, we by legislation, have foreclosed any future revival of such a subject. Well, now, Mr. Commissioner, before we conclude, the Committee invited you to make your statement of the conditions which you have expressed upon complaint of a large body of citizens, taxpayers, that ride on the Myrtle Avenue and Broadway lines, that come down into the Center Street Terminal, and while that Committee has no power other than to invite the President of the Brook-

lyn Rapid Transit to come over and meet his views, the Committee hopes, however, to be of some service in an attempt to help the Bridge Department and the city to place this subway connection in operation for the relief for which it was built at a large expense to the City of New York. That is the reason of your invitation, I think.

Frank J. Smith.— Just a moment, if you please. Then are we to understand in the last analysis that the people of the city of New York must suffer this head house at Park Row until the B. R. T. completes its Fulton Street third tracking on the elevated structure, that is what it amounts to? A. That is what it amounts to unless you can persuade the railroad company to come in and use this connection which is ready for their use now. plus the laying of the track.

Frank J. Smith.— And that is wholly a matter of persuasion so far as you know — no contract obligation or statutory obligation? A. You can bring a horse to water but you can't make him drink, you know.

Mr. Moss.— Have you plans prepared for the improvement of the Brooklyn Bridge to meet the uses of it that may be required? A. There have been studies made from time to time contemplating its reconstruction and there is now on the way a very careful study to bring right up to date whatever requirements that may be necessary to be made and improvements to be made to construct that Bridge for whatever purposes it might have to be put to.

Mr. Moss.— Especially in connection with this subway traffic? A. Especially in connection with subway traffic.

Mr. Moss.— Have you an estimate of the cost of such improvements? A. No, I have not.

Frank J. Smith.— Was this connection completed under your administration? A. Yes.

Frank J. Smith.— Now, pending its completion, was there any time when the B. R. T. or its President, have evidenced an intention to use it when completed? A. Prior to its completion we had the conference to which I alluded at the beginning of my state-

ment before your Committee here and then, while that conference was held for the purpose of Williamsburg Bridge matters, that were then in controversy between the railroad company and the Bridge Department, I took up at the conclusion of that conference the matter of this Loop connection between the Brooklyn Bridge and the Municipal Building and asked what did they propose to do — called their attention to the effort that had been made to install the ducts which I have told you all about and which I could not give the permission for because it might be construed as the first step to give away city-built property and city-built tunnel for nothing.

Mr. Moss.—That is all, Commissioner.

Will you kindly exchange chairs with the Commissioner, Mr. Berwind?

Mr. Moss.— Mr. Berwind, you are one of the Directors of the Interborough Rapid Transit Company? A. I am, sir.

Q. I think you were connected with the Inter-Met. in an official capacity, weren't you? A. Yes.

Q. President? A. No, not President. I have never been anything but a Director.

Q. Always been a Director. How long did you know Mr. Shonts before he became connected with the Interborough? A. Oh, I should think three years — perhaps four.

Q. Was Shonts President of the Inter-Met.? A. No, not at that time. No, sir.

Q. At any time? A. He is President of the Inter-Met. Yes, after its formation.

Q. After its formation and before he became President of the Interborough? A. No, I think simultaneously.

Q. Simultaneously? A. Those offices were given to him.

Q. How did you become acquainted with Mr. Shonts? A. I became acquainted with Mr. Shonts through Mr. Paul Morton in connection with a railway called the four C's I think, or three C's, I have forgotten which, in Iowa, which Mr. Shonts was operating and which was subsequently sold to the New York Central Railway. They induced me to interest myself in the stock of that Company.

Q. Who induced you to do that? A. Mr. Morton particularly but Mr. Shonts was the President of the Company.

Q. Did you meet Mr. Ryan at any time in connection with Mr. Shonts? A. No, sir.

Q. Do you know Mr. Ryan — Mr. Thomas Ryan? A. I have known Mr. Ryan many, many years.

Q. Did you ever talk with him about Mr. Shonts? A. Nothing except at the time that he was proposed to be made President of the Company.

Q. Yes, well, did you ask his opinion or did you receive his opinion? A. He didn't have to ask me. I suggested that my knowledge of him and his operations in the West and in the Panama Canal seemed to recommend him to me as a very efficient man to take up an executive position of such complications as the subway and elevated railways.

Q. Well, weren't the conferences between you and Mr. Ryan as well as with Mr. Morton over bringing Mr. Shonts into it? A. No, not beyond what I tell you I had no conversation with Mr. Morton on the subject at all.

Q. Were you in consultation with Mr. Shonts and possibly with Mr. Freedman with reference to the terms of the propositions that were made by the Interborough Rapid Transit Company for building subways—I think propositions began in 1909—? A. I had some knowledge, was not consulted by them particularly but the whole subject was discussed on the Board.

Q. When the sub-committees were appointed you were on the sub-committees as a rule? A. I was on several of them, yes.

Q. You and Mr. Freedman were, pretty generally—sometimes you and Mr. Belmont—but you and Mr. Freedman were pretty generally on the sub-committees with Mr. Shonts, weren't you? A. Only on the sub-committee when the hearings were going on in reference to same before the dcision was rached as to the subways, the discussion of the routes and how it was to be accomplished.

Q. Yes. A. We discussed and we attended the hearings at the Public Service Commission on that subject.

Q. Well, isn't it true that you and Mr. Freedman and Mr. Shonts, whether on sub-committees or not, conferred very fre-

quently over this matter of getting into the subway situation? A. If any conversation took place, I don't know. Mr. Freedman was particularly in them when these questions arose we discussed them —their advisability—and as they arose discussed their merit.

Q. Well, you discussed with Freedman frequently, didn't you? A. Oh, sometimes.

Q. And Mr. Freedman with Shonts? A. Yes.

Q. Now, were there any other Directors who took as much practical and active interest in this subject any more than yourself and Mr. Freedman? A. Well, I think all of the Directors were equally as well informed as we were.

Q. I am not speaking of the information—I presume they were but I am speaking about the activity. A. Yes.

Q. There are always in a Board some men that understand the subject or have some way of expressing themselves in it more than others. I imagine that your Board was no exception to the rule. Some men carried the burden. A. Well, I will answer your question by saying that I devoted a good deal of time to these matters because I am much the largest stockholder of these companies, and therefore I watched their interests as closely as I could.

Q. That threw you in contact with Mr. Shonts a great deal? A. Oh, yes, from time to time.

Q. What other members of the Board of Directors manfested an interest and an activity like your own? A. That would be rather difficult to say—how much they did, Mr. Counsel.

Q. Well, if I should say— A. Mr. Vanderbilt, Mr. Freedman, Mr. Belmont and myself. We were on that executive committee a good deal of the time and all these questions, as they arose, were brought into discussion, and their merits disposed of.

Q. Yes. Then the knowledge of the details of the negotiations and of the discussions of the propositions would be found among the gentlemen that you have mentioned, if among anyone? A. Well, more knowledge than anybody except executive officers of the company.

Q. Which began to make your propositions? I understand two propositions were made in 1909. Did you understand that those propositions involved the use of funds to be raised by the

Company? A. It was our idea to extend the subways as a private corporation.

Q. And when those propositions were made, which have already been put in evidence and which were such propositions as you and I have spoken of, did the corporaton—the Interborough Company—have in mind plans for the raising of the moneys that might be required? A. We hadn't got around to the question of finance but the idea of the owners of the Interborough and the Directors who were charged with it was that we should carry out the old Rapid Transit idea of extending the lines up north on the east side and south on the west side, and completing the original layout of the whole Rapid Transit Commission. That we didn't intend to be done with private capital.

Q. But the point is that you had means in mind if not absolutely down on paper, you had means in mind by which the money could be raised? A. We knew, as financiers, that that thing could be done if it was put in proper shape—that if we could arrive at a contract which was reasonably sure of paying us interest, we would raise the money.

Q. The proposition of December 5th, I think it was, 1910, was quite an extension of the proposition and it included use of the Company's finances. Was it intended by the Directors that that proposition should be stood on and put through if the city authorities would take it? A. Well, I don't recall it by dates, Mr. Counsel, so I couldn't tell you that off-hand but the proposition, on the face of it, must make that very evident—that if it was so intended it so stated because we are very clear in all our records about anything relating to finance of any other matter of material interest to the Company.

Q. Now it appears from the testimony that has been taken by this Committee that in March, 1910, (when I said December 5, 1910, I meant the preceding year)—it appears that in March, 1910, Mr. Shonts was in communication with the Mayor of the city of New York, Mayor Gaynor, and was meeting him in his office. The proposition of 1909 that I referred to prior to that was accepted. Did you know that Mr. Shonts was in communication with the Mayor? A. I knew of one occasion—I can't place the date—but I know that Mr. Shonts did. The Mayor at that

time, it seemed to us, was not fully advised on the merits of the subway situation and we were anxious that the Mayor should know as much about that business as we did and not answering that preliminary to your question. I met the Mayor myself, personally, at a private entertainment and I said to him—I didn't know him; I was presented to him—and I told him the subway question was one of very great importance; that from reading his various comments on the subject I was led to believe that there was a great deal of information there with which he was not cognizant and I told him I would like to have a conversation with him on that subject if he would make an appointment and he said, "You are just the man I want to see" and I made an appointment with him. I saw the Mayor a few days afterwards—the following Monday or Tuesday—by appointment and I approached him and told him that we were at that time talking about building down Seventh Avenue and up Lexington Avenue and the Mayor said—I said to the Mayor, "Mr. Mayor, it is more important to us than anything in the world that you should know as much about the subway business as we do and that we have your confidence, and I would be much pleased if you yould select from those with whom you have the greatest confidence, competent people to examine into the subway matters. We will open our books and papers and even go so far as letting them sit with us in our deliberations on this subject in order that the subject may be properly known — the values of the various schemes — known to you."

Q. Just interrupting you a moment — do you know whether that conversation was before or after the visit of Mr. Shonts to the Mayor at the City Hall which occurred, I think, in March, 1910? A. I can't tell you that. You see, it is a thing that I didn't fasten on my mind, and I am only giving to you —

Q. Have you any way of fixing even approximately the time when you saw the Mayor? A. No, I hardly think so, Mr. Counsel, at least I have nothing in mind now. If I can I will tell you.

Q. Did you ever read the Mayor's article on "Looting New York?" A. No, I don't know that I have. (He laughs)

Q. Did you ever read the Mayor's diatribes against the people involved in the Metropolitan Street Railways and in the

Interborough? A. Well, I have read so many articles of that kind —

Q. Were you ever a Director of the Metropolitan? A. Metropolitan what?

Q. Street railways. A. Street railways?

Q. Yes. A. I was.

Q. At the same time that Mr. Brady was? A. No, Mr. Brady was no member.

Q. Were you a Director of the Metropolitan Street Railways when Mr. Gaynor wrote the article about "Looting New York" in 1909? A. More than likely because I was in it as a Director for a long time.

Q. Well, when you spoke to the Mapor, how did you break through the ice? A. I am going to give you the entire text of that conversation.

Q. I understand, but there are things that accompany a conversation sometimes, things that precede it sometimes, things that accompany it which can't be reproduced in words and now, Mr. Berwind, it is just like this: You knew the Mayor had written "Looting New York?" A. Yes.

Q. You knew he had detailed on the sins of the Metropolitan Street Railway and its Directors. He had written the financial history (at least what he claimed to be the financial history) of that entire situation and had connected it up with the Interborough; had held the individuals controlling those corporations up to public scorn. He conducted a public campaign; he swung through an election; had been elected upon the issue which he created. Now, you had some embarrasment, didn't you, in going to the Mayor? A. Not the slightest.

Q. Well, he had some embarrasment? A. He had none.

Q. Seeing such a man as he had depicted in his article? A. He didn't betray it, Mr. Counsel.

Q. He didn't betray it? A. No, sir. I never had a smoother conversation in my life than I had with the Mayor on that subject, which was very short. I haven't finished it for you.

Q. No, I am going to ask you to finish. I have not forgotten that, Mr. Berwind. I will take it just as it comes, but these things occurred to me while you were discussing that con-

versation. No reference then, made to any of the attacks he had made upon you and your associates? A. No, sir.

Q. No introduction? A. No.

Q. Except the one which was casual at the entertainment? A. Well, yes. No introduction on the subject at all excepting I was presented to him at this entertainment.

Q. Now, there were some Directors of the Metropolitan that paid back — in connection with the Walton and Cortland Street deal — that paid back some money. Do you remember who they were? A. No. That ante-dated my time.

Q. That ante-dated your time? A. Yes, sir.

Q. Well, I won't refer to it any more. Please finish the conversation. A. Well, I was going to say I saw the Mayor in his office and I preambled my remarks. I stated before that we were anxious to have his confidence and we wanted him to have as full knowledge of what we had in mind and everything bearing upon the situation as we had ourselves. It met immediately with a very prompt response from him. He said, "Do you mean that?" and I said, "Yes, we mean it and I can answer it for you," and he shortly after appointed a Mr. Kingsbury, a Bridge Commissioner —

Mr. Quackenbush.— Kingsley Morton.

Mr. Berwind.— Kingsley Morton and a Mr. Ingersoll, I think, who was an expert engineer on the New Haven road.

Q. (By Mr. Moss.) Pardon me for interrupting. How long after that conversation was it when those gentlemen were appointed? A. Oh, very shortly.

Q. That would put your conversation with the Mayor as being subsequent to Mr. Shonts. I am merely telling you that — considerably subsequent. A. I would not like to say that.

Q. Well, I am simply suggesting to you. A. I know.

Q. That would be my judgment upon the testimony. A. And then those gentlemen reported and they kept in conference with us, I think indefinitely, I don't know how long.

Q. Which saw the Mayor? Did you know that Shonts had seen him? A. No, sir.

Q. When I say — A. That is my impression now. I don't recollect it.

Q. Where did you see the Mayor? A. I saw him at a private entertainment at Mr. Vanderbilt's house.

Q. And wasn't it arranged that you should meet him there? A. No, sir. I was an invited guest there. I am a friend of the —

Q. That is the entertainment, but where did you meet the Mayor afterwards? A. I met him at his office; made the appointment there.

Q. That was by appointment? A. By appointment made that evening.

Q. Was anyone with you? A. When I went to keep the appointment?

Q. To the Mayor's? A. No, sir. No one.

Q. Did you see the Mayor in company with anybody else at any time? A. No, sir, excepting at dinners afterwards and public affairs.

Q. When you met the Mayor at Mr. Vanderbilt's house was there a large party or a small party there? A. Oh, a large party; that was an evening entertainment. There must have been a hundred people there.

Q. Were there any other Interborough Directors there? A. Well, maybe. I don't recollect that there were. Possibly Mr. Belmont was there.

Q. Was Mr. Freedman there? A. No, sir.

Q. Was Mr. Hawley there? A. No, sir.

Q. Did you have or did you confer with Mr. Hawley from time to time about these affairs? A. No, sir, excepting Committee matters; nothing particularly concerning the subject.

Q. Did Mr. Shonts ever tell you of any call that he made upon the Mayor or any interview he had with him personally? A. He told me about his having gone to see the Mayor at his place down on Long Island, wherever —

Q. Did he say for what purpose he went there? A. I don't recollect that he did except that he went over to talk with him in a general way about the subway business.

Q. Well, didn't you know he was going to see the Mayor? A. No, I did not.

Q. Were you surprised when he told you? A. I was not sur-

prised; I though it was a very natural thing for him to do; it was what I would have done.

Q. Do you know that he went with Mr. Townes? A. I didn't know Mr. Townes; I never heard of Mr. Townes until afterwards.

Q. Did you know that he went with Mr. Campbell? A. No, I did not. I knew Mr. Campbell but I didn't know that he went with him.

Q. Did you have a talk with Mr. Campbell about the meeting with the Mayor down at St. James? A. No, sir.

Q. Please state what Mr. Shonts said to you about the meeting with the Mayor. A. Well, he mentioned that he had seen the Mayor and gone over the subject of the subway situation with him; that is all — a mere general conversation — had no special import that I remember at all, has made no impression on my mind at the time or now.

Q. Were you present when Mr. Shonts reported to the Board his interview with the Mayor on one occasion? A. I don't recall such a report by Mr. Shonts to the Board. Mr. Shonts was in the habit of stating any events of any importance but I don't recall him having —

Q. I refer to a report made by Mr. Shonts which was copied into the minutes which was important enough to be copied into the minutes. Do you remember him making such a report? A. I haven't looked up any of this and I don't recall that.

Q. Do you remember the occasion when authority was given to the Executive Committee to make a contract? A. Yes, that I remember.

Q. Don't you remember that at the meeting when that authority was given to the Executive Committee, Mr. Shonts made a report of a meeting with the Mayor? A. I don't remember definitely that fact. There were some conversations made from time to time by the Mayor that it is rather confusing to look back so far as six years.

Q. Do you remember the occasion when Mr. Shonts reported the result of a conference had at the home of Mr. Willcox when he and lawyers of your Company had met the Public Service Commissioner and lawyers of the Public Service Commission to go over the subway proposition? A. I remember when that meeting

took place, Mr. Counsel but the exact report that was made I do not recall.

Q. Did you see the tentative agreement or rather the tentative proposition of your Company for the construction of the subway which was under discussion in that meeting at Mr. Willcox's house? A. I think it more than likely that I did. My mind is running on the same proposition that your is.

Q. Well, now, I have reference to a proposition that was dated in March, 1910. A. Yes.

Q. March 23, 1910. A. Yes. Well, that is the one. I would like to look it up to see whether I can recollect what that is exactly. You see, I haven't charge of that.

Q. I think I will bring it to your mind in a minute and perhaps you will have an opportunity before we finish to refresh your mind upon all these matters. I want you to do so.

This proposition was based upon figures which were carefully made by Mr. Gaynor and other officials regarding traffic and prospective traffic and so on and there were several versions of it produced. The first one was the 10th of March; another was on the 23d of March; then there came another one, I think, on the 28th of March in which slight changes were made and it has been stated by some of the witnesses that those changes indicated the progressive understanding between Mr. Shonts and Mr. Willcox. Do you remember the thing now? A. Well, I remember those interviews taking place. I remember that we had different points of differences which were discussed and changes made — just what they were I don't recall but there were many points of difference between the Public Service Commission and ourselves as to the —

Q. Mr. Willcox and Mr. Harkness have both written and both testified that there was almost an agreement — an oral agreement — upon that document of March, 1910, and that was produced before your Board on the 24th of March, 1910, and that tentative proposition proposed that the work should be done by the Company and financed by the Company. Then came the resolution giving the Executive Committee full power to make appropriations. That was practically the Committee. Now I want to know, Mr. Berwind, what conversation occurred in the Directors meeting or in the Executive Committee meeting concerning the

financial side of that proposition which would have committed the Company to pay for the work. What conversation was there about that? A. I really can't answer that question because I don't really remember.

Q. I don't expect you to remember this all at once, Mr. Berwind. A. I don't remember.

Q. But I am bringing it to your mind by calling up a number of circumstances. I am taking more time that we would in Court because we ought to — A. That is all right. I am very glad; I will tell you all I know.

Q. I want you to have your mind upon it accurately. Here is the situation as I see it, Mr. Berwind in the propositions of 1909 March and September, I think they were the Company was to do the work with its own money. In the written proposition dated March 23d, formulated as a proposition, a proposition similar to those of 1909, the work was to be done by the Company's own money. That document being produced here, Mr. Willcox and Mr. Harkness and others were asked to explain it and they agreed that that document was practically agreed upon at Mr. Willcox's house. There was a meeting there that lasted until two o'clock in the morning with Mr. Shonts present, and Mr. Shonts left, giving them the impression that the Company was going to make that proposition. It was a proposition that had been carefully considered because it had been written out on the tenth of March and a copy of that document was found in Mr. Morgan's letter-file, showing that it had been submitted to him as the financier of the transaction, now that proposition — A. In 1910?

Q. 1910, yes. A. Was submitted to Mr. Morgan in 1910?

Q. Yes, sir. A copy of that letter came out of Mr. Morgan's file. A copy of this letter came out of Mr. Morgan's file, dated March 10th, and that is how we found out that it had been formulated back as far as March 10. We came to the conclusion that Mr. Morgan must have known something about such a matter as that and his files were re-examined here within a couple of months past and his missing planet was found. Somebody said there must be a planet in that space and the missing planet was found. There. now, I a rehearsing these things so that you can see how closely the evidence shows that your Company was committed informally to a proposition in March, 1910, that called for the use of the Com-

pany's money. Now, it appears from the evidence, and I think from the fair preponderance of all the evidence that Mr. Shonts, having attended that meeting that broke up at two o'clock in the morning at Mr. Willcoxs house, went down to his Board of Directors, saying "Here is what we have tentatively agreed upon," and there at that Board of Directors' meeting something happened. A change occurred in the plan that had been so far carried out and the whole matter was given over by the Board of Directors to executive committee. The Board of Directors practically divested themselves of their superior power and committed it all to your exact Executive Committee. Now, I want to know what conversation occurred among you gentlemen which resulted in a change of the plan which had been proposed. A. Well, I am a little confused here as to times.

Q. Yes, yes. A. It makes a little difference. I believe that the Tri-borough were opposed to anything but the carrying out of the old Rapid Transit idea. We thought it was a most practical way and the only way in which any private corporation could use its money so as to make it possible to build those subways and get a return. The Public Service Commission at that time were very much engaged in what is known as the Tri-borough system which we were entirely opposed to.

Q. They were not pushing that thing in March, 1910. A. Well, I didn't know whether they were pushing it as late as that. That is the reason I asked.

Q. Yes, I am trying to help you with that. I don't think that the Public Service Commission were hampering you with the Tri-borough proposition until 1911. A. Well, no. I was wondering when that was, exactly, but be that as it may, I don't know. I can't recall now exactly what particular reason the Executive Committee could have had for turning over that proposition. I don't recall it—if I did I would tell you in an instant and I would like to look that thing up in detail.

Q. Well, you shall have the chance to do it. A. Because I don't want to give any inaccurate information; I want to give the exact facts.

Q. Oh, you may not be able to connect this thing up by dates — put it down like a time table. A. I know, but I don't remember that meeting — I don't recall it.

Q. Though you may not be able to do that, I want to direct your attention to facts which must be in your mind. That up to a certain point the Company was to spend its own money and was making the proposition upon the basis of spending its own money and received from its executive officers a document which showed up the result of untold labor and negotiations with the Public Service Commission. Then you gentlemen turned it over and substantially said, "We don't have to do it that way; we won't stand by a proposition by which the Company shall furnish its own money." A. If that turn was made it was made by the discovery of some very good reason; why I have not in my mind today, and I do not recall it but I will post myself.

Q. Well, I am going to ask you to do that because it is evidently — A. I will be very glad to do it.

Q. We won't finish our conversation at this session.

Mr. Nicoll.— Mr. Moss, Senator Thompson informed Mr. Quackenbush that the subjects you wish to interrogate Mr. Berwind about were a cold contract and he said that you wished him to testify generally.

Mr. Moss.— There must be some misunderstanding about that, Nicoll.

Mr. Nicoll.— Yes, so I asked him to come to my office and told him that, and never said anything to him about your purpose to examine him generally as a Director.

Mr. Moss.— Well, Mr. Nicoll, I certainly have not —

Mr. Nicol.— No, not the slightest.

Mr. Berwind.— They wouldn't know where I keep this. I have never looked up a paper or a meeting or a document or anything in connection with it.

Mr. Moss.— I have all respect for you, Mr. Berwind, and am not meaning to indicate that the tone of my question — by the tone of my questions anything uncomfortable or unpleasant. We can look each other in the face.

Mr. Berwind.— Yes, yes, I know. All right, sir.

Mr. Quackenbush.— If you want a suggestion, Mr. Moss. I will make it to you.

Mr. Moss.— All right.

Mr. Quackenbush.— It may help Mr. Berwind. The March, 1910 provision called for the use of Madison Avenue. Mr. Berwind is getting into his mind the idea that that left Lexington free for the Tri-borough development; that may help him to refresh his recollection.

Mr. Berwind.— Oh, yes.

Mr. Quackenbush.— I guess that is what happened.

Mr. Berwind.— I remember that discussion very well.

Mr. Moss.— Well, do you remember that after that — It seems to me I am right in this, the railroad made a proposition which included Madison Avenue.

Mr. Quackenbush.— Yes, but I make this suggestion to you if you want to develop that, because that may help Mr. Berwind's recollection.

Mr. Moss.— Well, I am very glad to get Mr. Berwind a reminder.

Mr. Berwind.— Well, it left Lexington Avenue open for an independent group, which might be divided — as was all the property which we had gone into.

Mr. Moss.— Yes, but didn't your company make a proposition later than that for the use of Madison Avenue? A. No, I think not. Don't bar out the Tri-borough. The Tri-borough went on. We would not have built at all; that meant our ruin. But, Mr. Counsel, if you will give me a little time to lock up that situation and you want more information, I will post myself —

Q. (By Mr. Moss.) I am going to do that and we will take a recess very shortly, too, but before we do that I will perhaps open up some other matters that you may want to look into. Haven't you in your mind that your Company, up to a certain point, did not propose to furnish all the money? A. We were perfectly willing at that time. We thought it was practicable if they extended

the subways on the old Rapid Transit idea that the money could be raised by our private means without the aid of the city participating that was to be our own enterprise.

Q. Well — A. But the city —

Q. Well, what put it into your head — if you can give it to me that way — what put it into your head or the heads of your associates that the city could be induced to furnish the largest part of the money? A. Now you are asking me a question which I never knew — where the dual system arose. I don't know what suggested it.

Q. But there came a time when you people spent your efforts in producing propositions that went on up to the Public Service Commission with some hope of going through, which involved the use of city money along with your own money and which involved, if the officials agreed to it, a departure from that present election pledge. Now, where did you get the courage to make propositions of that sort? A. I have no recollection of anything of that kind, involving any change of plan, excepting that we discovered that other plans by the Public Service Commission were so constituted as to make it a dangerous proposition for us to use our own money as we originally contemplated. I think that is about the situation that induced the change.

Q. What were those other plans? A. I am talking about the Tri-borough, for example, and certain routes which were involved. Of course you must bear in mind I am not an engineer; I don't go into this much.

Q. Wasn't there a time when somebody suggested that instead of having to pay or raise the large sum of money that would be required to build this road yourselves there was a way or there might be a way found which would induce the officials to recede — some of the officials to recede from the position they had occupied and allow the city to be tied up with the private capital? A. I have no such recollection whatever of any such intimation as I told you before.

Q. Wasn't the expression used at one of the meetings that there was an easier way? A. I have never heard it; it is new to me. I think the dual system was a complete surprise to everybody in it.

Q. Well, the dual system came sometime afterward. I am

talking now about the early date of 1910. A. I have no such recollection.

Q. Even before the Tri-borough was being pushed the great fight between the Board of Estimate and Apportionment, where some men couldn't stay put over night, occurred in the early summer of 1911, and what I am talking about is 1910. A. Well, I don't recall that and I don't recall that expression ever had been used, to my knowledge. I have no recollection of it whatever. These plans were changing very rapidly in those days from time to time, from the time of the original discussion —

Q. Well, they were changing rapidly — A. And of course, therefore, you have got to — I have got to place them in my mind — I have no recollection.

Q. Well, leave this spot for a moment, and we will go down towards the end of 1910 when I think the first proposition was made by your Company. After that tentative proposition dropped do you remember when your company made a proposition to build a very liberal subway using that term, I think you will understand me, in a broad way. And to give the city the entire profits for the first five years. A. I don't recall any such proposition.

Q. Don't you remember that your Company proposed that the city should have the entire profits for the first five years? A. That is December 5, 1910? I don't really remember that proposition having been made to us. Was it made by us? In connection with other things, maybe I don't know. I don't recollect that particular clause in the contract unless it was coupled with another that gave us a great deal.

Q. Well, now, I don't know what it gave you, but don't you remember a proposition in which the profits were to be determined after the taking out of rentals, city rentals, cost of operation, cost of amortization and bonds and no preferential of six million dollars, and even under such a financial system as that, without any excess of preferential the city was to get the first five years the entire profits and after that to divide even? A. I don't recall; a portion of it is vaguely in my mind but the rest of —

Q. Don't you remember any proposition where the city was to get the first five years of profits? A. I have an idea, a recollection in my mind, the question of the city's profit for twenty-five years. That was at one time spoken of but I don't remember

how it was tied up, so that therefore I am very imperfect; my evidence would be no good unless I could inform myself as to the facts, you know, look it up and call it up —

Q. Well, that proposition. A. If it is in evidence, then it must be so.

Q. And barring some little things that I may have omitted, I have given you the plan of it, the substantial plan of it. A. Yes.

Q. That the rentals and sinking fund interest on the bonds for both sides was to come out, no preferential based upon earning capacity of the old subway, and on such a liberal scheme that the city was to have the first five years profits attached, and after that don't you recall that there was such a proposition? A. No, I don't recall the details of that proposition. I will look it up; I will give you all of that.

Q. Well, I am going to ask you to look that up. A. There is nothing I want to hold back. I would like to know the facts.

Q. I am sure there was a proposition which, if it had gone through, would have bound the city to the payment of some of the money, not so great a proposition as now, but some of the money. There would have been a chance for the city to get some profits; there would not have been a postponing, there would not have been a deficit, there would not be a postponing of profits until all of us had passed into the next world where they don't need subways. I hope we will be in that part of the next world. A. I assume. however, it wouldn't have been the presence of the subways that are not contemplated that makes a vast difference in the results, you see.

Senator Thompson.— In the next world I suppose they run in the subways and elevators.

Q. (By Mr. Moss) Yes, but I don't know how much my opinion is worth but I think when you come to examine that proposition of December, 1910, you will find that the expression I sued liberally in point of binding and liberally in point of terms as a fair statement. A. Very well.

Q. Now then, let me go over this for a minute because I am really trying to bring your mind back to some things where you may be able to tell us something to date. You have in 1910 and 1909, two propositions by the Company contemplating the use of

its own money entirely. You have in March, 1910, a proposition almost put through, brought down by Mr. Shonts to you and your associates which contemplated the use of city money and which suddenly flew off; you have meetings between yourself and the Mayor and Shonts and the Mayor — A. One meeting.

Q. Shonts had two; that is, he told us about two, and you had one. Then that carries us along to December, 1910, with a proposition made by your Company which requires the city to put up some of the money, not as much as now. A. Yes.

Q. Actually gives the city look-in, gives the city no danger of deficits and gives the city an immediate look-in on the profits; now what carries you up to December, 1910. What occurred — what was said —what had occurred after December, 1910, which led to your proposals of 1911, which left the city a way in the background, away in the rear, with no prospects in years within our reach of getting in? A. I fancy it was one of those usual discoveries. It was the negro in the wood pile.

Q. Well, what was the nigger? A. I don't know.

Q. Who was the nigger? Whose nigger wat it? Who put the nigger there? Do you spell the nigger m-o-n-e-y? A. No sir. Not a dollar.

Q. How do you know that? A. Well, I know as much. I am interested. I say not a dollar.

Q. I am not saying, Mr. Berwind, far be it from me to say or even insinuate that you handed anybody any money or that you participated in the handing of anybody any money. A. Well, I will go further than that; I have no knowledge directly or indirectly, if by any device or by any means or any agency or any commission or anything, that any money has ever passed from the Interborough Company to anybody connected with the city government or any other person bearing on the situation.

Q. That is broad; that is broad. Well, what knowledge have you that any persons who have received the bounty and the favor of the Interborough have not done some such things? A. I am perfectly convinced of it. If I though the he couldn't stay there a minute.

Q. I don't say they are there now, in the Company. A. Well,—

Q. Hasn't it ever occurred to you that some of the people that received the bounty and the favor of the Inter — A. I can't see where they could get the means to pay it.

Q. Might have converted the nigger into money. A. I don't think so.

Q. Have you ever looked into the subject? A. I have looked into it as far as any Director could look into anything.

Q. Have you ever heard the thing suggested? A. Never heard it suggested that money was used.

Q. Have you ever read the suggestion? A. Nothing, except in this Commission. I have heard it since —

Q. Have you ever read or heard of it before this Commission was ever formed? A. No.

Q. That there were commitments and obligations? A. No, sir. Not I.

Q. Have you ever heard or read before this committee was formed, the accusations of George McAneny regarding the Stevens contract which he said in public contained unusual and unnecessary and exhorbitant profits? A. I — No.

Q. Did you read those statements of Mr. McAneny? A. I don't know that I did. I know there were comments made which were adverse to that contract.

Q. Before the Stevens — I am speaking of the Stevens contract now and before this Committee was formed or thought of, and when men were not sparring for position and when men were not defending themselves against the possibility of being called as witnesses here, did you read in the newspapers that itemized statement of McAneny? You must have read it? A. Oh, I have read it, yes.

Q. Yes? A. Probably; I don't remember its contents exactly there are so many —

Q. When you read this statement of Mr. McAneny published in the World and published in the American (I speak of those two because somebody handed me the clippings here yesterday and I referred to them in the testimony) when you read those two statements and probably the statements printed in all the other excellent and adequate New York newspapers, did it occur to you that something might be doing on that contract? A. No, sir, and I don't believe there was.

Q. Well, doesn't it seem to you a remarkable situation that your Company, fighting for its life — A. Yes.

Q. — fighting against the danger of the Tri-Borough business,— A. Yes.

Q. — later fighting against the B. R. T.— A. Yes.

Q. — later engaged in a conflict where it seems to me — I am only one responsible for this thought — that the Morgan influences and the Brady influences fought themselves to a finish, the one represented in your Company and the other in the B. R. T. fought themselves to a finish and then had to divide up because neither could kill the other; A. Well, Mr. Counsel, if you want to know what I —

Q. Yes, go on. A. My statement is, as I said before, that I do not believe, as far as I know you can have all the evidence and everything I know, that there is any agency either directly or indirectly or by any —

Q. Well, I have not got to that point and I want to give you every opportunity to make that statement of yours as broad as possible.

Senator Thompson.— Yes, let him make it now.

Mr. Moss.— And I —

Mr. Berwind.— Iwant to make that statement —

Mr. Moss.— And I do it with the statement, frankly made, that I have no thought of connecting you — I have nothing in —

Mr. Berwind.— Oh, no. I know that. I don't take it personally. No, but I am a Director —

Mr. Moss.— Surely, and responsible —

Mr. Berwind.— I am the largest stockholder of the —

Mr. Moss.— —and responsible in that way.

Mr. Berwind.— I am careful to watch the interests —

Mr. Berwin.— I am careful to watch the interests —

Mr. Moss.— And I want, and I tell you that fairly, that I have this in mind —

Mr. Berwind.— — and no officer of that corporation could stay there a minute or any of its Directors, if I knew it.

Mr. Moss.— Well, now, start off again.

Mr. Berwind.— If it would end continuing on —

Mr. Moss — Well, you were in a situation, Mr. Berwind, where your Company was fighting for its life against the Tri-Borough proposition. I base that on your own testimony, where your Company was fighting the B. R. T.'s influences and where your propositions were of more than usual importance because they were binding your Company to some sort, at least publicly, to some sort of a program and you move along in your propositions by the route I have shown you. First, propositions for your own money, repeated, then a tentative proposition with your own money suddenly switched off after your own executive officer brings it down to you, with numberless interviews bound up in it, having departed from the notion of putting in your own money entirely. You will go a little further and call for city money; you dare do that, but even then you call for city money with such a proposition as gives the city immediately profits and no defiicits and then, when the fight gets thicker down in 1911, when your antogonists are right up to you, face to face, then you make your propositions which are of such a character that Mr. McAneny, the Comptroller's right hand man, has testified here that it will be years and years that the city will have to pay deficits and many years more before it gets any chance at profits and you did all that in the face of the opposition that has been described, when perhaps the biggest financial interests around this metropolis were engaged in a death grapple and neither was able to kill the other — A. Well, I want —

Q. — and finally divide the territory. A. I want to repeat to you —

Q. Now then, did it never occur to you, when you read Mr. McAneny's criticisms of the Stevens contract that that might be a place where an active, honest Director would find commitments and obligations had been placed? A. I am an active, honest Director and I can't find the commitments or obligations.

Q. What did you do, finally? A. What did we do? I will give you the entire history of the —

Q. But just pointing, please, to this. You read something — you read McAneny's criticisms? A. That has no bearing —

Q. Yes, it does. You said you read it. A. The facts I want —

Q. You said you read it — you read McAneny's criticisms. A. That does not effect my —

Q. Now, please listen, because I want there to be a fair understanding between us before your answer comes out. After you read McAneny's criticisms and the suggestions that that contract might have in it improper profits — A. Yes.

Q. What did you, as a Director, or any of your associates do to look for the commitments and obligations that might be in that Stevens contract? A. I will give you the exact history of it.

Q. All right, go ahead. A. When the question came up, of thirdtracking the elevated lines and making the extensions on the elevated lines, the city had been pressing us very strongly to get that third-tracking done because it would relieve the congestion of the city a great deal and the most rapid way that was possible to third track the elevated railroads was a job that involved a great deal of danger and risk, because traffic on that elevated railroad was very heavy. The danger of doing the third tracking, in doing the work at that time without stopping the traffic was also of great danger. This thing had been impressed several times upon us by our operating officers; it was then, about that time, when this question was likely to come up in the Public Service Commission about carrying on this work that Mr. Shonts, who was ill, was going to Europe — my recollection is it was a few days before only — and at the Board of Directors' meeting he stated that this question of third-tracking the elevated — this giving out of these contracts, and extension of the elevated system — might arise during his absence and he thought that it would be a proper time to discuss the questiin as to the best way of doing this. Mr. Shonts claimed that what he wanted in the construction of that third-tracking, which involved very dangerous foundation work, construction work as well as operating work, required an engineer of peculiar quali-

fications and he said to keep that traffic going with the least element of danger and to avoid possible accident and get the greatest speed of action; he would like to have an engineer who was peculiarly fitted for that work and I said, "I know of no man better qualified for that than Mr. Stevens." Mr. Stevens was then on the Illinois Central R. R. and he had been on the Panama Canal with Mr. Shonts and he claimed that they had long and constant relations running over many years. The discussion in the Board was taken up. The Board, as a body, are very apt to receive the recommendations of its President and of the Executive Committee and the suggestions seemed to us to be a very good one to have that agency, that kind of a man or that kind of a concern handle the business. The question of compensation was talked about and what that contract should involve. The first thing talked of was this elevated proposition, not only involved the building of the third-tracks on the present system, but the extension (and it also involved the equipment) of that operation. I immediately said, "Well, it seems to me if we want to employ that kind of an agency we want to confine it strictly to that portion where that operation is dangerous and requires that kind of talent. I can't see that it requires it for the equipment." That was immediately conceded by everybody. Mr. Shonts was the first to say, "You are quite right; no use of including, under percentage contract the equipment which we can tend to as well as they can."

Senator Thompson.—When was this conversation, Mr. Berwind? A. Oh, this was just before Mr. Shonts went to Europe; it must have been in 1913.

Senator hompson.—At a Directors' meeting? A. That was at a Directors' meeting.

Q. Were you at the Directors' meeting? A. I was. June, I think it was. Now, we had a very full meeting, and then Mr. Freedman was alive and I think it was he, I won't be sure, Mr. Freedman said, "Well, there is another point to be considered; this compensation of percentages must be regulated by what the services rendered by the contracting company." He immediately said, "Whoever takes up this thing must provide the entire equip-

ment, provide everything necessary for carrying on this business; we have got to in order to regulate a commission to suit the case and the contractor ought to own the equipment because it is no use to us after the erection."

That ended that discussion and the committee was appointed to look into this matter, I think Mr. Lane and Mr. Read and Mr. Freedman and myself were appointed on that committee. We looked into this matter and commenced this discussion and I think it was the next day we inquired into the practice of the largest corporations who do that work, the Pennsylvania Railroad, for example, other large corporations that had been doing this work, where the road had to be kept running, you know, and the work done as well, so at that meeting one man — some of us felt that — the absolute amount of commission was never touched on. We got this data, put it together and various sums of commissions that might be asked were talked of. Mr. Shonts said that he would like to have the counsel of the Company prepare a form of contract, a form of application, I think it was, to the Public Service Commission — am I correct about that, Quackenbush?

Mr. Quackenbush.— Yes.

Witness.— Which would cover this case because we could make it broad and we could modify it at any time to suit the case, and so that in case the Public Service Commission, during his absence, wrote it up that we would have a form of contract to prove by them that we could go on and make these contracts. Well, Mr. Shonts went to Europe. That contract, I don't believe, ever was drawn; if I remember, I never saw it, at least the application never was drawn or if it was —

Mr. Moss.— This was a contract presented to the Board of Directors?

Mr. Quackenbush.— Well, Mr. Moss —

Mr. Moss.— With a blank for commission.

Mr. Quackenbush.— Mr. Berwind means the application —

Mr. Moss.— Oh, for the third tracking?

Mr. Quackenbush.— Oh, no, the application for their waiver of the right to enter into the contract but when he says it wasn't presented, he is in error because it was presented by Mr. Shonts.

Mr. Berwind.— Well, anyway, I —

Mr. Moss.— Thank you, Mr. Quackenbush.

Mr. Berwind.— Well, Mr. Shonts went to Europe and the thing died out; never heard anything more about it and in the meantime Mr. Stevens had gotten into some trouble in his financial affairs, I think, and Mr. Shonts came back from Europe and then the question was reopened and bids obtained from various people.

Q. (By Mr. Moss.) Well, now, let's see. Do you say that Mr. Stevens had a peculiar qualification? A. He had.

Q. What was it? A. Because he had been actively engaged in the operation of a railroad in the West and he had been a great engineer in the construction department of that railroad.

Q. Well, your Mr. Hedley is a very able man, isn't he? A. Yes, but he's got other things to do.

Q. I know he has, but he is directly connected with the running of the trains, isn't he? A. Yes.

Q. And with a department that might be interfered with by the contractor? A. Yes.

Q. So, he'd be on the ground, wouldn't he? A. Yes, but that is just the point. If the contractor was the man that controlled the trains and had knowledge of it, we'd have great assistance to this railroad. I don't think any professional man would question the wisdom of that.

Q. Well, did they third track in Brooklyn? A. I don't know anything about it.

Q. They had to rebuild the structure a great deal more than you would a light structure? A. Well, you asked me for the facts.

Q. No, but I am asking you if you can tell me. A. Well, I am not an engineer.

Q. Do you know if it was an ordinary contractor that did this work over in Brooklyn? A. That may be.

Q. Without any accidents? A. I don't know what the conditions were.

Q. And had to build up a loose, weak structure, not comparable at all with the structure in Manhattan. You know that? A. Well, I had been told by a very competent engineer that this was

the most extraordinary piece of work to have accomplished without accident that has happened in —

Q. You probably overlooked Brooklyn. A. No, I did not look for Brooklyn at all.

Q. And if you saw that done by an ordinary contractor over in Brooklyn, why it is worth looking into, isn't it?

Senator Thompson.— Mr. Moss asked you a question and I will let you go, because we don't want to make this too long, but I don't think you answered his question. The question that he asked before you made your long answer, I don't think was answered. I think his question was, "After you had understood Mr. McAneny's criticism of this contract, which was after the time that the circumstances were related occurred, he wanted to know what you did about it as a Director of the Company, and I don't think you answered that question. A. I thought it was all right for you to make that statement. Oh, yes. Well, I made the statement in accordance with the facts that occurred.

Senator Thompson.— Your statement related to facts that occurred before Mr. McAneny's criticism was published. A. The thing has been naturally a question like that continuing unnoticed by the record of the Board, that that is such statement as Mr. McAneny's, but there are no members of this Board, I believe, or anybody connected with the Company that has the slightest conception or believes there has been any irregularity.

Q. Well, you haven't looked for it. A. Yes we have looked for it.

Q. Well, what did you look for if you didn't believe it? A. Why did we look for it? We looked for it because — We didn't look for it; we discussed it.

Q. Well, you haven't looked for it? A. Well,—

Q. Did you put a detective on it? A. No.

Q. Did you hire any detective at all? A. Don't need any sir; the books of the Company all show and the expenditures of the Company will show —

Q. I know, but did you expect to find Mr. Stevens' acts or Mr. Gillespie's in the books of your Company? A. But —

Q. Now, answer that, please. A. Did I?

Q. Yes. A. None of our business what he does after we had made a contract.

Q. That is just what I have thought — none of your business what they do. A. It was not our business to follow it up beyond after they had performed their duties with us, and did them at the proper price, and under proper conditions of contract, the thing passed beyond us.

Senator Thompson.— I still think that Mr. Moss' question was fair. A. Oh, yes, I don't think it is unfair.

Senator Thompson.— And in effect that was after Mr. McAneny's criticism, what did you as a Director do to follow that up, I think that is what he asked.

Senator Lawson.— Yes, that is what — A. Well, we had no — we didn't follow it up any further because there was nothing to follow up, there was —

Senator Thompson.— Well, answer — A. Because contracts made by competition afterwards with another concern, after Stevens was gone we had no relation to him so he can't have done any harm; he had no contract; it never existed.

Senator Thompson.— I suppose the answer to that would be so far as you are personally concerned, as a director you didn't do anything after the McAneny criticism. A. We took no action —

Senator Thompson.— You, as a Director, he asked. A. Didn't suspect anything because the McAneny criticism passed away — because Mr. Stevens passed away.

Q. (By Mr. Moss.) Well, now, since that time have you done anything? Have you? A. No.

Q. Down to date? A. No, we have only done this.

Q. Now, you spoke about Mr. Stevens having a plant, I thought. Define a plant. A. He said, if these were all tentative things, remember the contract never was made, Mr. Counsel. Mr. Stevens never had a contract with us.

Q. I know, but there was a proposition squarely put before your Board of Directors and the rates were discussed. A. There was no definite proposition made to us at all.

Q. Wasn't the reason why didn't make a contract with Mr. Stevens because you found an opposition to it in your Board? A. No; it was not.

Q. Did you find an opposition to it? A. Yes, there was some opposition.

Q. What? A. No more in this than in others.

Q. Did you oppose it? A. I opposed that portion of —

Q. What portion of it? A. When I said to wipe out all the equipment, Mr. Freedman insisted that they should have a plant, and the terms of that never were discussed; there was no opposition to Mr. Stevens but the form of contract and the price of it never came to any decision or any discussion.

Q. Well, was 15 per cent. discussed? A. No, sir. All percents were discussed from 5 to 20.

Q. Mr. Fisher has testified that percentages were discussed up to 15 per cent. A. Well, they were more than that; they were discussed from 5 to 20.

Q. Five to twenty. A. It depended on what the contract included.

Q. Now, then, with a contract for such a well qualified man as Mr. Stevens and assuming that Mr. Stevens would enter into such a contract as was laid before you, did you oppose twenty per cent? A. No, there was no contract laid out with that included, so I opposed nothing. The questions of the percentages never was discussed excepting as mentioned as the contracts according to what the work done might be. That contract never was drawn.

Q. Didn't Mr. Shonts submit a skeleton contract? A. No. Yes, he may have. I don't recall that there was any contract of any kind —

Q. Didn't Mr. Shonts submit a skeleton contract to the Public Service Commission? A. To the Public Service Commission, as I understand it, the object in making that application was so that the authority would be there for us to make that contract — to make a contract afterwards, that the terms of that contract never were decided upon.

Q. I know, but it went so far that the skeleton contract was submitted to the Public Service Commission and you had the tentative contract before you — the proposition right before you —

and only waiting for the percentage to be arrived at and put in. A. Oh, no. Oh, I beg your pardon.

Q. Well, now, when percentages were talked, what percentage did you talk? A. Didn't talk any percentage because I depended that it never was arrived at what that contract should include.

Q. What percentage did Mr. Shonts talk? A. Well, I don't remember; I have forgotten exactly, I think —

Q. Who expressed the twenty per cent? A. Well, that I don't recall; that thing was talked all around the Board.

Q. Did Mr. Shonts say twenty per cent? A. No, I don't know that he did; I am quite sure he didn't.

Q. What percentage did Mr. Shonts speak of? A. He spoke of the practice for this kind of work of large corporations and that we ought to get the lowest percentage consistent with that practice and that the practice was, in some corporations, from ten to fifteen per cent., I think were the things he talked about as approaching the practice of the larger corporations in all such operations.

Q. Did any members of your Board object to the proposition upon the basis that it wasn't right? A. How do you mean, wasn't a proper contract?

Q. Wasn't a proper thing to do. A. Yes, there was a gentleman in the Board who thought this thing ought to be put open to all competition and who had advocated a very good and responsible concern that he thought ought to be asked into this with other concerns.

Q. Well, didn't the other position include the amount of the percentages that was discussed? A. The question of percentages never could be discussed because they didn't arrive in the discussion.

Q. Do you remember whether or not Mr. Stevens had given Mr. Shonts authority to have a percentage put in? A. I do not; I do not. No.

Q. Did you know that Mr. Stevens was willing to accept for himself seven and a half per cent.? A. I don't know anything about that.

Q. Did Mr. Shonts tell you that Mr. Stevens was willing to take seven and a half per cent.? A. I don't recollect if he did.

Q. Did Mr. Shonts tell you the lowest percentage that Mr. Stevens would be willing to take? A. I don't recall that.

Q. Do you know of any reason why Mr. Shonts would not tell you, his fellow Directors, what was the lowest percentage that Mr. Stevens was willing to take? A. Well, I don't think he'd gotten that far; it had not gotten to a question of negotiation of percentage.

Q. Didn't you know that the question of percentage had been discussed between Shonts and Stevens? A. I knew there must have been some discussion with them but the question never came to us in form —

Q. Didn't you ask Mr. Shonts what figures had been talked of between him and Mr. Stevens? A. Mr. Counsel, I want to tell you — I have been telling you this — told it repeatedly. There was no contract made with Mr. Stevens and the terms of that contract —

Q. I know that — A. — were being discussed by us.

Q. Surely, and I am on that basis with you. A. Therefore I can't see the pertinence of your remark.

Q. Well, now, I will try and make you see it in a pleasant way. A. All right.

Q. There was something under discussion, wasn't there. A. Yes.

Q. And that something lead to the possibility that Mr. Stevens might do that work. That is so, isn't it? A. The possibility, yes.

Q. And there were percentages being discussed all the way from five to twenty, weren't there? A. Yes, there were and —

Q. And you knew that Mr. Stevens and Mr. Shonts had been associated together in the Panama Canal, didn't you? A. Yes.

Q. And you knew that they were friends, didn't you? A. Yes, I don't —

Q. Was any question asked that you know of or that you remember, of Mr. Shonts, as to what percentage Mr. Stevens would be willing to do it for? A. I don't recall whether Shonts mentioned the commission or not.

Q. Well, now, that is a question that I want to drive to you, please. A. Well, I —

Q. Here is Mr. Shonts presenting to you a skeleton or tentative

proposition and you are discussing percentages on an outlay which would make your percentages run into — A. Yes, but —

Q. Now, listen to me. I know you wont, but you were discussing, now those percentages upon the large amount of that contract, might run into millions of dollars. A. Yes, that is true.

Q. That is true, isn't it? A. Yes.

Q. Was Mr. Shonts asked the question as to how far he had gone in discussing these terms with Mr. Stevens? A. I don't know that he was; he stated them frankly himself.

Q. What did he say Mr. Stevens would accept as a percentage, then? A. He never went — I don't recall that he mentioned what he would accept. The main question that was discussed before us was the advisibility of employing that kind of agency for that construction.

Q. I know. You answer my question now. Why wasn't Mr. Shonts asked what would be the lowest percentage that Mr. Stevens would take? A. Because he didn't know.

Q. Did he say so? A. Why, of course he did, because he discussed it with us.

Q. Did he say he didn't know what was the lowest percentage? A. Oh, he didn't say that language, but he didn't because he didn't discuss it.

Q. You corrected yourself, then. A. No, I want to be very clear about it. I don't —

Q. You were just then, but you were telling us that Mr. Shonts said it. A. I was telling you this —

Q. Now, then, nobody asked Mr. Shonts what was the lowest percentage that Mr. Stevens would charge? A. I don't think — we never got to that point that I remember.

Q. Who was the member of the Board that objected to the proposition upon the grounds that it was not right? A. Well, I don't know that; he opposed it on the ground that he thought it was better policy to have that question open to competition and the man was Mr. Lane.

Q. Well, did other members of the Board take a similar position? A. I don't recall that they did.

Q. Didn't Mr. Read take a similar position? A. Read? I don't think Read did take the position, to be perfectly frank with you.

Q. Did Mr. Morgan take a position? A. Mr. Morgan wasn't there.

Q. Wasn't he asked about it? A. I don't think he was; I didn't ask him and nobody else asked.

Q. Did you know of Mr. Morgan writing a letter to Mr. Shonts? A. No, sir.

Q. Disapproving of it? A. No, sir.

Q. Mr. Stevens was not acquainted with Mr. Morgan, was he? A. I don't know.

Q. Was Mr. Gillespie acquainted with Mr. Morgan? A. I don't know.

Q. Did you ever inquire to find out if Mr. Gillespie had interests which were interesting to Mr. Morgan? A. No.

Q. Did you ever take opportunity or occasion to inquire whether Mr. Gillespie's relations with steel interests helped to make him friendly with Mr. Morgan? A. No, sir I did not.

Q. Did you ever take opportunity to inquire whether Mr. Morgan would prefer Mr. Gillespie to Mr. Stevens? A. I did not. That competition was a straight case of business that we had. That is all we were —

Q. Yes, well now, you made a contract with Mr. Gillespie — A. Yes.

Q. — for the third-tracking, didn't you? A. Yes.

Q. And you made a contract with fifteen per cent., didn't you? A. Yes.

Q. And that contract was so good for Gillespie that he could sub-let it at ten. A. I don't know.

Q. And keep five per cent. premium. A. Well, I don't know that it is so; you say so — I don't know.

Q. I think that was proved before I came here, wasn't it, Mr. Chairman?

Senator Thompson.— Why the record shows this, that the contract was taken by Gillespie and that he kept five per cent. and that the balance, ten per cent., he split with Terry & Tench, who did seven-eights of the work. They split that. They took out the cost and then split the balance between Gillespie and Terry & Tench. That is what our record shows and that was what the contract gave Terry & Tench. It shows Terry &

Tench did the work and they claim they took the responsibility and performed this service without stopping trains and that their compensation was one-half of ten per cent. after taking out the expense, which would amount, I should judge, to about two per cent.

Q. (By Mr. Moss) Well, then, Mr. Gillespie got the five per cent. and divided with the other gentlemen the remaining ten per cent. Two per cent was expense; am I right about it, Thompson?

Senator Thompson.— That is the record.

Mr. Berwind.— Mr. Counsel, let me get right back to a primitive position to the real kernel of this situation. This contract was put out to be let and there were eight or ten, I don't know how many concerns were invited to bid upon this proposition. Mr. Gillespie was the lowest bidder for that proposition. That answers your proposition; what he does with his money is not our business.

Q. (By Mr. Moss) Well, no, of course it isn't your business if you won't make it some. A. No, but he got the lowest bid; this thing was being given to the lowest bidder.

Q. Well, when you find that his bid was so low — A. Please let me —

Q. No, no because you are volunteering and I want to put this question in. When you found that his bid was so low that he could save, say five per cent. to himself and sub-let it and take a portion of the remaining ten per cent., with the criticisms of McAneny, which was a criticism of principle and with the criticisms that have been evoked since that Committee came into existence, did you say you have never done anything to find out what Gillespie did with the money? A. My dear sir, our responsibility ended the day we let it to the lowest man that would build that work and do the work for us efficiently.

Q. Now, I consider, Mr. Chairman, that that one answer is worth — A. That is my feeling about it.

Q. — is worth the examination.

Senator Thompson.— Yes, I understand but do you know there

is another question we want to ask. Of course this competitive bid, Mr. Berwind, was a bid by invitation, that is, to eliminate competition among them? A. Yes, everybody —

Q. (By Senator Thompson) You only asked six or eight concerns, as understand. A. Six or eight, and important concerns.

Q. (By Senator Thompson.) And the people that actually did the work, Terry & Tench. Did you know that they were higher bidders than Gillespie? A. Yes, I knew that. I knew it afterwards. I can tell you the circumstances.

Q. (By Senator Thompson) They bid fifteen and a half or fifteen and three quarters per cent. and still they took the work under Gillespie for one half of ten per cent. A. Well, I fancy that I looked into that and that I, when these remarks were made, I said, "How could Gillespie do it, because as I understand it he financed them and did a lot of other things which are not usual, and assumed that himself?" And moreover I understood that the people whose names I don't even know, I think Snare & Trieste were one and then there was a firm, Terry & Tench, are great experts for underground work, they are great experts on accounts of gas supply —

Mr. Quackenbush.— Terry & Tench are steel erectors and Gillespie is underground portion — A. And Snare & Trieste also had a very high reputation and their bids were higher than Gillespie's, as I understand it and then, as I understand it, Mr. Shonts, who was very anxious to get this work done promptly and have the very best talent in the world as there are so many lives at risk in this matter, said, "Can't you begin to do this work, with these people, and make it shorter? If you can do that and get them to your terms, why it would please us a great deal better and we'd rather award the contract in that way." I think that was the sum and substance of it.

Q. Well, did you ever ask Gillespie if, out of his profit he had paid anybody commitments and obligations, or did any of your Directors ever do so? A. I never did; I don't know.

Q. Now I think that would be a good time for you, Mr. Chairman, to take up this other engagement —

Senator Thompson.—We had another engagement at half-past four; it is ten minutes to six.

Mr. Berwind.— Well, the only things I want to look up —

Senator Thompson.— Well, I want to finish these as we go along. Now for instance, I don't want Mr. Berwind hunting up on the propositions. I want to dispose of him while we are here, see? When we get through we will let you go.

Mr. Berwin.— All right.

Senator Thompson.— Now, I want to ask you just one question. There is one thing, Mr. Berwind, that this is impersonal. I had a letter from a fellow who said he was the largest individual stockholder of the Interborough. Now, you claim to be the largest stockholder. A. I don't know; I think so.

Q. (By Mr. Moss) That was Wilson. A. Well, so I know. I am not in the Interborough, I am in the Interborough-Met. which owns all these —

Senator Thompson.— I see, I see. The large majority of the stock in the Interborough is owned by the Inter.-Met.? A. Is owned by the Inter.-Met., yes.

Senator Thompson.— And you are the largest stockholder of the Interborough? A. What is now the Interborough Consolidated.

Senator Thompson.— I see. I see. I begin to understand.

Mr. Quackenbush.— Well, as compared between Hr. Berwind and Mr. Wilson, he amounts to insignificance —Mr. Wilson does —. Mr. Wilson's got a little outstanding stock of the Interborough Rapit Transit Company.

Q. (By Mr. Moss) Were you in any deals to buy Inter.-Met. stock with Mr. Freedman or Mr. Hawley? A. We made several times — we wanted the stock of those Companies. We bought it through banks and in various other ways and we made agreements to buy a certain amount of stock. I have got every share of this stock today. What they did with theirs I don't know.

Q. Were you operating together? A. We did at that time. We did in one or two cases for specific amount, then stopped.

Q. Yes, well did you pick up all that was in sight? A. Oh, no.

Q. Pick up a controlling interest? A. No, never had an interest with anybody, except —

Q. Didn't you call in Freedman or one of these associated together in getting some of the Inter.-Met stock? A. Never for the purpose of —

Q. I don't mean for purposes, but did you do it? A. We had, as I told you, we may on one or two occasions pools of,— not pools, but an agreement to buy the stock. I don't know what the amount was, and that was bought and I think they sold theirs. I have got mine still. That was not done for any purpose of control or anything of that kind.

Senator Thompson.— Do you remember going into a pool of five people? A. Yes, about five or six.

Senator Thompson.— Who were the five? A. You mean recently?

Senator Thompson.— No, I mean — Well, in 19 — A. It was not a pool. There were four or five. Our securities were dragging around, we were earning dividends and business was good, and the Company was solvent, business was in good shape and we thought that the Directors, if they would buy a certain amount of those securities, would give a better tone to the property in the stock market, that is to say among a better standing, and it was agreed that certain Directors, five or six of us, I have forgotten whether it was six or five, we agreed to buy a certain amount of stock apiece and that stock was bought by Barney & Co. and they have got mine still. I took the segregated, Mr. Freedman died, Mr. Bacon died, and that stock — they each went and took his share of the stock.

Senator Thompson.— Let me see, there was Freedman and Mr. Bacon, you say. A. Mr. E. R. Bacon, yes.

Senator Thompson.— And yourself. A. Yes, that was three.

Senator Thompson.— Who were the other two? A. Mr. Bel-

mont, I think and Mr. Vanderbilt and Mr. Planti or Mr. Sullivan.

Mr. Nicoll.— I don't think he was. A. I don't know; I have forgotten who the other was but anyway —

Senator Thompson.— What I was thinking of, there was one case of what I noticed one fifth participation, and I wondered what that meant. A. I will look it up for you.

Senator Thompson.— I wish you would. A. I am only telling you with the operation —

Senator Thompson.— I don't want the Board participation to have any different meaning than proper.

Mr. Nicoll.— Well, you have got all of that information.

Senator Thompson.— Oh, I didn't know that this question has ever been asked before.

Mr. Nicoll.—I know, but I gave Hardy orders to give all the information —

Mr. Berwind.— Any information on that subject you want I can get.

Senator Thompson.— For one fifth participation.

Mr. Quackenbush.— Well, now, here is a fair question Senator, on that. Now, you can ask Mr. Berwind —

Mr. Moss.— That was a freak shake-up.

Mr. Quackenbush.— Was there anybody interested in any of those arrangements except your own associates?

Mr. Berwind.— None at all; none whatever.

Mr. Quackenbush.— But this participation business —

Mr. Berwind.— Either directly or indirectly?

Senator Thompson.— But you can find out there was a case of five —

Mr. Quackenbush.— You can find out, though, who they

were but I want to get out that idea that there was any outsider around.

Mr. Moss.— Was there any transaction in which Mr. Shonts was interested?

Mr. Berwind.— He had an interest in this.

Senator Thompson.— Well, we will look that up tomorrow.

Mr. Berwind.— You are perfectly welcome to it.

Senator Thompson.— Well, we will suspend until tomorrow morning at eleven o'clock.

Adjournment.

MAY 11, 1916.

MUNICIPAL BUILDING, NEW YORK.

The meeting was called to order at 11:30 A. M., Senator Thompson presiding.

Testimony of MR. E. J. BERWIND.

Examination by Mr. Frank B. Moss:

Q. I have before me minutes from the Public Service Commission. It says: "The net profits from operation to be arrived at as hereinafter provided shall be disposed of as follows: First, the city to take all net profits for the first five years from the time of beginning operation. The net profits after five years to be equally divided between the city and the Interborough Company. The net profits shall be determined by deducting from the gross receipts the expenses below listed: 1. Amendments of equipment, including allowance for depreciation. 2. Maintenance of ways and structures, including allowance for depreciation. 3. Traffic expense and cost of conducting transportation. 4. General administration expenses. 5. Taxes of all kinds. 6. The actual charges of the Company for carrying the cost of equipment and providing a partial sinking fund of three-fourths of one per cent per annum to meet obligations and for carrying that portion

of the cost of construction not met by the funds contributed by the city and providing a sinking fund of one per cent. of their run. Next, interest on bonds issued by the city to defray the cost of construction per annum as a sinking fund; and those deductions from the gross revenue."

You agree with me that there is no division for any preferential there? A. There is nothing in that statement.

Q. And nothing likely to prevent there being one? A. Well, I am not prepared to admit that. We thought so when we made that proposition. If that proposition had been carried out in the spirit in which it was made and the Public Service Commission hadn't kept Lexington Avenue and Broadway way up their sleeves it might have been a pretty good proposition, but that still stood there and, of course, it put a very different complexion upon it.

Q. Well, that certainly was a proposition favorable to the city — as favorable as any that was made, wasn't it? A. It was, yes.

Q. And after that the opposition of men in the city service, the opposition of men of the B. R. T. came in strong for both sides? A. Well, I don't know whether the opposition came in, but we discovered that the Lexington Avenue route was kept open and the Broadway route was kept open, and that was a menace to any of our money being placed by putting that route in competition with any route that we might build.

Q. But the proposition — the point that I made yesterday was that as the opposition to your proposition grew, the terms which you made against the city increased? A. Yes; because we discovered what we were up against.

Q. Exactly. You and Mr. Shonts had seen the Mayor. After seeing the Mayor you withdrew the proposition, or at least you discontinued the proposition which provided for the use entirely of company funds? Then came this proposition of December, 1910, where it was contemplated that there should be some contribution by the city, as well as the company, but you were willing to divide the profits up with them. And after that came the pounding from whatever sources it did come and you kept stiffening up your proposition and standing on it, didn't you? A. We stiffened up our proposition as various circumstances developd. We discovered facts that led us to believe that our proposition was

met with antagonism in the way of competition, which we didn't look for. Circumstances forced us.

Now, I want to divorce one thing very clearly from your mind: my conversations with the Mayor never touched on any proposition.

Q. Let's not get away from the trend of the examination. A. But you brought it in!

Senator Thompson.— If you don't get to answer a question that is asked, I shall see that you get to answer it. And if you have an explanation in relation to matters that Mr. Moss brings out, which is not in direct answer to the question, I will give you an opportunity to do that; but let's follow as much as possible the questions asked. A. I only wanted to make that one point clear.

Q. Did you find that your company was antagonized or your proposition antagonized by some members of the city administration? A. I don't know that we did.

Q. Did you find they were criticized? A. Well, no I do not. Oh, we were constantly criticized by the Public Service Commission.

Q. Didn't you find that Mr. Prendergast was criticizing you? A. I don't remember that he criticized that particular proposition.

Q. Don't you remember the report of the majority of the committee which went out in January — January 5, 1911 — signed by Mr. Prendergast and signed by Mr. Mitchell, in which they not only attacked your proposition but attacked the personnel of your company and charged it with having been obstructive? Don't you remember that? A. Yes, but we were accustomed to that.

Q. But there you were attacked by the majority of the committee, including the Comptroller and the President of the Board of Aldermen, in which they not only antagonized your proposition, but antagonized you personally, and antagonized your company, and declared almost that it was in contempt with the City of New York? At any rate, you remember that don't you? A. Well, I remember the attacks, not in detail, but in a general way.

Q. It would go far beyond anything I have said. I don't want to fill the record with language until the time comes to report —

but that was printed and circulated. Don't you remember it? A. I remember that protest, yes.

Q. I think there was one of the Borough presidents that lined up with them, didn't sign that report, but lined up with them generally. Don't you recall that? One of the lesser Borough presidents? A. Well, I can't answer that definitely, but I am perfectly willing to take your word for it.

Q. Well, you realize that at that time the B. R. T. had friends, didn't they? A. Not at that time.

Q. You didn't realize it at that time? A. No, sir.

Q. Now, the way that you met the antagonism from the city authorities was to stiffen up your proposition and demand more and more, wasn't it? A. That is in one sense true, but it is only true with a qualification.

Q. Well, you may qualify it. A. The qualification is this, that these negotiations went on from day to day and the Public Service Commission used every device and every means to use the Tri-borough as a club to force us into an arrangement with the city which would be very favorable to the city. We examined those questions and went into them, and as we found that they were protecting themselves by a route which meant bankruptcy to us, we declined to carry out that proposition.

Q. But you stiffened up your own proposition? A. Exactly.

Q. I think you and I are in an agreement along the line of general thought. I have intimated to you the opposition of the Board of Aldermen and the Comptroller, but now you suggest more opposition than that. Namely, opposition in the Public Service Commission. opposition by the president, Mr. Willcox, of the Public Service Commission. They were urging the Tri-borough route and some of these gentlemen were urging that they were bound to carry out the Tri-borough route, and it had been intimated that your people were still worried for fear that a Tri-borough route would paralyze yours and drive you into bankruptcy? A. That's so.

Q. Now, with all that situation confronting you, you departed radically from your proposition of December, 1910; you began to demand preferentials, for instance — didn't you? A. Well, I couldn't say that.

Q. The chronologies show that you began to demand preferen-

tials, you began to demand that the expenses of the company should be paid before the expenses of the city? A. Yes.

Q. You began to demand that the expenses of the company should be treated in a cumulative way, so that if there was a definite insight into the company's expenses, it would be carried on to the next — you began to demand that, didn't you? A. Yes. You have got that report all before you — you are better informed than I am. I only follow it from my recollection of it.

Q. I can't expect you to follow all the details which fill volumes; but in a geenral way, I am sure that your mind goes along with mine.

Q. (By Senator Thompson.) Mr. Berwind, did you take a personal interest in the affairs as they went along? A. Not in detail.

Mr. Moss.— But Mr. Berwind explained yesterday that he had been on the committee that had particular charge. The record will show that.

Q. (By Senator Thompson.) But whenever a committee was appointed, either of the board of directors or if there was a committee of the executive committee, you were generally on the committee? A. I was on the executive committee.

Q. On the sub-committee? A. Well, we didn't have many sub-committees.

Q. Well, as I remember, there was a sub-committee in relation to this Stevens contract. I think you were on that? A. Yes, sir.

Q. And there was a sub-committee in relation to the payment of extra compensation to Mr. Shonts. I think you were on that? A. I was on the first one, not on the second one.

Q. Well, where did the idea of preferential come from, did it come from your company, or did it come from city officials? A. Well, I couldn't tell.

Q. Can you tell the origin of the preferential idea? A. No, I don't know where the preferential idea came from. I suppose it was worked out by our executives and our officers in a way to meet the conditions which were found to be existing, and which were likely to exist. Of course, this was a running question or discussion. This thing changed from day to day as matters led up

which led us into another line of thought or suggested another line of thought or aroused a suspicion here or there — we tried to cover that suspicion.

Q. (By Mr. Moss) You met conditions as they arose in your discussions with the city officials? A. I think so.

Q. And wasn't the preferential idea developed because you and your associates feared that under this new arrangement that was coming in, there would be a disappointment, at least in the profits, and you wanted to make sure that your company would have some profits? A. Exactly! That was clearly our object.

Q. Clearly your object? You doubted the financial success of this plan from the beginning. A. The financial soundness of it.

Q. You doubted the financial soundness of the dual system plan, didn't you? A. No, I won't say that. We didn't think that the dual system was a very good one — we thought it was going beyond the necessities of the time.

Q. Exactly! And you were bound, if you could manage it in your negotiations, to secure something for your company which would assure you of your dividends? A. Yes, sir.

Q. Did the city authorities know that that was your position? A. They mnst have, because we were in constant communication with them.

Q. Did they know that you doubted the financial soundness of these plans and that you wanted a preferential so that you wouldn't come out at the small end of the horn? A. They certainly didn't suppose we were making these discussions for the purpose of simply making discussions. We did it to make our position sounder.

Q. Well, did they know that your insistence upon preferentials arose from a doubt that there would be a profit to be divided? A. I have no means of knowing whether they knew that or not. I assume they did.

Q. And then you would assume that they knowingly entered into the plan of creating a preferential for the company without any doubt of the idea being prominently before them that there might be a shortage in profits? A. I don't know what they thought.

Q. In general profits? A. They were up against a proposition in dealing with us, and we were the ones that felt that the position was unsound. Whether they thought it was unsonud or not didn't concern us, nor did we enlighten them.

Q. It was clearly evident, and any intelligent man could see that you were insisting on a preferential? A. That was stated.

Q. Then, these gentlemen went into that scheme with their eyes wide open, knowing that they were not going to get any profits from the city for some time to come? A. They always had their eyes wide open.

Q. Now, looking at this 1910 proposition again, I see that the proposition contemplated that the city would contribute $53,000,000, and that your Company would contribute $75,000,000, or whatever balance was necessary to finish the work. A. Yes, sir.

Q. Now, that 1910 proposition put the City where it knew (if it accepted it, of course) that $53,000,000 was all that would be asked of it to pay, that the bill for the Interborough would probably be $75,000,000, but if $75,000,000 wouldn't cover it, the Interborough would have to raise it. A. Yes.

Q. Now, with all the fight you had, with all the opposition that came against you, you finally evolved a situation where it was the Interborough Company that contributed the fixed sum? A. Yes.

Q. And the burden was put upon the City to contribute a larger sum at the start and to make up the deficiency, if there was any? A. Well, yes.

Q. What gave you the confidence, knowing the opposition of certain members of the City government, knowing the attitude of certain members of the Public Service Commission,— what gave you the confidence in face of that opposition to go on stiffening up your proposition against the City of New York? A. That's very readily answered.

Q. Go on. A. The answer to that proposition is this: We thought that if we had $43,000,000 of the City's money entering into this new enterprise that they would not put any additional money into the so-called Tri-Borough opposition.

Q. But you don't catch the point in my question. A. Well, that is the answer to it.

Q. That is from a different angle. The point of my question is this: With the game so heavily stacked against you by the opposition — the powerful elements — what gave you gentlemen the courage, the confidence, to meet that opposition by constantly stiffening up your proposition and demanding more and more. A. I am unable to tell you exactly what originated the $43,000,000 proposition.

Q. I am not asking you about that. I didn't ask you who suggested it. I am asking you what gave you gentlemen that extraordinary confidence to meet that proposition by sitffening up your proposition and demanding more and more money? A. We found we couldn't go on unless we did get more and more. That was the pure business reason.

Q. Why did you sit right down? A. Well, we had a right.

Q. But where did you get the confidence? A. You will have to look to human nature for that, that is brought about by conditions.

Q. Didn't you gentlemen receive assurances, or at least information that satisfied you that if you stood firm long enough there were some of the men who had been opposing you who would change their opposition and help you through? A. I have knowledge of no such assurance from any source.

Q. Have you had such information? A. No, sir.

Q. Wasn't your confidence based upon a prospect which was good enough to bank on, that when the show-down came some of the gentlemen who had been opposing you would not be opposing you any longer? A. No, sir, I had no such assurance, as far as I am concerned, or any knowledge of it.

Q. Did you expect the gentlemen who had denounced your Company and denounced its methods and had gone before the City of New York for a Tri-Borough project and had claimed to have been put in office upon such claims as that — did you expect them to change their position and vote for you? A. We made them a proposition —

Q. Never mind that. Did you expect them? A. I have no way to answer. I didn't expect it, no.

Q. Then how did you dare to put in these constantly growing propositions? A. The same way I would put in any business proposition.

Q. Did you expect that the Mayor would recede from the position? A. Did you expect the Mayor, who has such a large number of votes in the Board of Estimate and Apportionment, would recede from the position which he took when he wrote "Looting New York" and vote for your Company? A. I didn't know whether he would or not.

Q. Did you expect he would? A. I didn't give the slightest thought to whether he would or not.

Q. Then why did you go to see him? A. I never went to see him on that question.

Q. Why did Mr. Shonts go to see him? A. To get the Mayor to give him the information he could and to tell him that he could have the use of our papers, our books, our information to properly inform him as to the facts of the subject, the subway situation — nothing more, nothing less.

Q. Did you think he meant what he said when he wrote "Looting New York?" A. I never paid any attention to that. There are a great many things written that I don't pay any attention to.

Q. Did you take the plank of the Democratic party, which he said he wrote himself? A. I didn't look into the poetical side of it at all, no, sir.

Q. But there was a plank binding him to a certain course of action antagonistic to your Company, which he said publicly he wrote himself, and went into office on? A. No.

Q. Did you think he meant that? A. I don't remember that the plank was there, and if it was there, I didn't believe it, and if I had I wouldn't have paid any attention to it.

Q. Weren't you anxious to have him change his position? A. I was anxious in the way that I recited in my evidence yesterday, only in a broad general way that he should know all the facts that we knew about the subway.

Q. Well, let's pass from him. A. The business end of it, I had nothing to do with.

Q. You were interested in it? A. I was.

Q. And your stockholdings made you financially interested?

A. Yes, I am happy to say that I paid very close attention to the economies of that institution.

Q. Exactly! And they worked out well? A. Well, I don't know; that remains to be seen.

Q. You gentlemen won in your courageous course. A. I am glad you think so.

Q. Well, you did. You got not only the proposition you were willing to stand on December, 1910, but you got something fabulously better, didn't you? A. Well, we are better satisfied.

Q. I know, but we can use that expression literally—"fabulously better." A. Well, if that's the expression you desire.

Q. Well, maybe millions don't mean so much to you as they do to me. Did you ever call upon Mr. Mitchel? A. No.

Q. Why didn't you want Mr. Mitchel to understand your proposition? A. Mr. Mitchel was ill with typhoid fever.

Q. Well, he wasn't ill all the time. This thing spread over several years. A. I didn't call on him because the Mayor of the City was the ruling officer of the City, that is the senior officer. He made himself very conspicuous in subway matters and all the Mayor was asked by me was to inform him, and that was all.

Q. He made himself very conspicuous on the subway matter by denouncing your plans and insisting upon City ownership—you knew that didn't you? A. Oh, I didn't say I didn't know it. I knew what he published generall speaking.

Q. Well, let's get down to accuracy. The Mayor was no member of the Public Service Commission, was he? A. No.

Q. And he didn't in himself have a majority of the votes in the Board of Estimate and Apportionment, did he? A. No.

Q. And Mr. Mitchel was attacking your propositions, and he had three votes in the Board of Estimate and Apportionment? A. I know he had some, but I don't know how many.

Q. And he was well to the front in antagonism to the plans of your Company, wasn't he? Now, you know that, don't you? A. He fought for principles of municipal ownership.

Q. You wanted to get your Company through its troubles, didn't you? Why didn't you see him? A. It was not my problem to see him.

Q. Why didn't Mr. Shonts see him? Did you ever ask Mr. Shonts? Did you ever take any steps, conduct any conferences, looking to making Mr. Mitchel understand the error of his ways in the same way that you tried to convert Mr. Gaynor? A. I don't know whether any director or Mr. Shonts ever saw Mr. Mitchel or not.

Q. You didn't think it necessary, did you? A. Oh, I didn't say that.

Q. Did you think it necessary? A. If I thought anything could be accomplished, I would go to see him.

Q. Well, of course, you didn't think it was necessary if you didn't think anything could be accomplished, but why did you think nothing could be accomplished? A. He was on record in every way.

Q. Wasn't Mr. Goynor just as much so? A. No.

Q. He was certainly opposed to certain contracts. Didn't he make more speeches in the election that Mr. Mitchel? A. Well, I will cut that short by saying that those things are not matters that attracted my attention in the degree they seem to have attracted yours.

Q. You have already said that Mr. Mitchel had committed himself more strongly, or you have intimated very strongly? A. I said Mr. Mitchel was generally in favor of municipal ownership.

Q. Wasn't Mr. Gaynor equally so, as far as public utterances? A. Well, I will assume that he was, if you want to.

Q. Didn't you know it? A. No, I didn't know it. And if he changes his plans, that's his affair.

Q. Well, why didn't you try to change Mitchel's mind? A. I didn't do that.

Q. Did you see Mr. Prendergast any time? A. Only at the meetings.

Q. Do you know Mr. Prendergast? A. I was presented to him at various hearings.

Q. Did you know him other than meeting him at his hearings? A. I did not.

Q. Do you know whether Mr. Shonts saw Mr. Prendergast? A. I think not. He was only interested in an official capacity at these hearings.

Q. Yes, there were many hearings, I have noticed that. Was any report made to your Board of Directors or to your Executive Committee or to any special Committee of which you were a member regarding any conference with Mr. Prendergast? A. Not that I recall.

Q. Now, you have recalled with me the fact that Mr. Prendergast since that happening in January, 1911, has joined hands with Mr. Mitchel in denouncing your proposition and your people. Now, Mr. Prendergast had three votes and Mr. Mitchel three. There's six votes in the Board of Estimate and Apportionment. Why didn't you make a similar effort to reach Mr. Prendergast as you did to reach Mr. Gaynor? A. I don't know but what the efforts were made, but you are questioning me — I made none of those efforts; that was not my problem.

Q. I am asking you not what you made, but what you may have information of? A. I have no information ofany special efforts. I think the idea of our Company was to try to convince those gentlemen who were representing the city's interests what could be done or to arrive at an understanding which would be mutually satisfactory.

Q. I understand that. A. That's all there is in it. You can't get it any further nor any less. That's the whole transaction. There were none of these insinuations of this thing, that thing and the other—they are nothing to us.

Q. Of course, we are not able to change facts. Facts are facts. A. That's a fact.

Q. But we don't always appreciate the atmosphere there is around those facts, and I want you to understand what is my thought in asking these questions—I think you do. Now, didn't you gentlemen take counsel together regarding your opponents and the opposition which they presented in these meetings of the Board of Estimate and Apportionment and the Public Service Commission? A. Not as individuals, only as a Public Service Commission.

Q. Did you ever discuss among yourselves the opposition to Mr. Prendergast and of Mr. Mitchel, which was expressed not only in public, in a public meeting, but in the circulation of their

wiews? A. It was never discussed excepting that this opposition existed, but in no other way.

Q. Didn't you gentlemen ever count up the number of votes that were in the Board of Estimate & Apportionment and canvass among yourselves what number of votes were counting against you and what could be done to enlighten the men who were voting against you, didn't you ever do that? A. We knew about the number of those votes that were against us, but as to enlightening them was a question of convincing that commission of the propriety of our proposition.

Q. What did you gentlemen do to enlighten Mr. Prendergast? A. He was present at every hearing, discussion, he heard every argument on both sides, and he arrived at his own conclusions.

Q. Did any engineers discuss the matter with him as they did with the Mayor? A. I don't think so.

Q. Was he asked to look into the facts and to make an investigation of your books, etc.? A. I don't know that he was. If he wanted to, he would have been given the opportunity.

Q. But you didn't approach him to get him to do that? A. Well, we didn't go as individuals to every member of the Public Service Commission.

Q. Did you realize, Mr. Berwind, that in a matter of franchise you needed eleven votes in the Board of Estimate & Apportionment? A. Yes.

Q. And there were six opposed to you, weren't there? A. I don't know how many. Quite a number were opposed to us.

Q. So unless somebody who had been opposed to you changed his vote, you couldn't get through the Board of Estimate & Apportionment. A. That's evident.

Q. Now, what conversations and consultations did you gentlemen have about getting members, or some member of the Board of Estimate & Apportionment to change his vote? A. I have no recollection of any conversation bearing on that point.

Q. That would look like a very natural and proper thing to do —to discuss it. A. Well, we didn't discuss the question. We wanted to convince that Board.

Q. Was that left to some individual? A. I think not—I know of no such thing.

Q. Was that left to the president, Mr. Shonts? A. That wasn't left to anybody—it wasn't discussed.

Q. Did Mr. Shonts undertake it? A. I don't know that he did.

Q. He went to see the Mayor at Saint James without getting authority to do it, didn't he? A. As an executive of that company, it was his business to convince everybody in favor of the proposition which we were setting forth.

Q. And you didn't want to beat the air. You wanted to convince the men whose votes you needed, didn't you? A. I suppose that was part of the program, yes.

Q. Well, what did you expect your excellent executive to do in face of an adverse majority in that Board of Estimate & Apportionment? A. Why to convince them that they were wrong.

Q. How? A. By the force of his arguments and the correctness of his statements and the soundness of the proposition.

Q. And, of course, there is no use asking again, you will say "No," but I was going to ask you what did he do to convince Mr. Prendergast? A. I don't know that he did anything.

Q. You never asked him? A. It never occurred to me to ask him.

Q. Well, do you remember when Mr. Prendergast wrote a letter in a newspaper office which that newspaper published? A. On what subject?

Q. Announcing that he would continue to hold the same position that he did before the election? A. There are so many of those things were published at the time, I have no doubt read it, but it made no impression on me, as a great many other things those gentlemen wrote.

Q. Exactly. But after he had joined with Michel in condemning your proposition and your company, after he had gone to this newspaper office and signed a letter in this newspaper office, practically saying he would stand firm against you people and that being published—it was only a short time afterwards that he through his vote with the Mayor and gave you the necessary majority. Now how was it done? A. It shows that arguments of our Committee and our proposition must have been forceful enough to convince him that it was the proper thing to do. Something occurred

to convince him to the extent that he thought it was proper, I suppose.

Q. Well, do you know of any new argument that was presented to Mr. Prendergast? A. I do not.

Q. Were you surprised when you learned that Prendergast had voted for you and pulled you out of the hole? A. I wasn't surprised.

Q. Did you expect it? A. I didn't, but I wasn't surprised.

Q. You took it as a gift from the sky? A. Not at all. I took it that our proposition was a sound one and appealed to him.

Q. Was that one of the reasons why you gave Mr. Shonts his bonus? A. He earned the bonus by hard work.

Q. No doubt; but that hard labor included the constant negotiations and conferences with members of the city government who had to be convinced? A. Well, that's true, too.

Q. Now, were not only the plans formulated but the city government convinced and even the men who had been fighting your company by name came out and added their votes and pulled you through—wasn't that part of the service for which you compensated Mr. Shonts? Wasn't that part of it? A. For that portion of it, not at all.

Q. Wasn't that in it? A. It was for continuous services, night and day, that Mr. Shonts was compensated for. He spent several years beyond his regular duties to negotiate this contract, and the contract was finally concluded—and, as I said, it was a contract which was mutually satisfactory from the benefits of the city, as well as ours.

Q. Was Mr. Shonts drawing pay from railroads in the west during that period, up to three years ago? A. I think so.

Q. About $40,000 a year? A. Well, I am not posted about that.

Q. And drawing from your company $100,000 a year? A. $75,000 a year.

Q. Then when this thing came over you gave him a bonus of $150,000 and raised his pay to $100,000? A. And I think it was cheap!

Q. Undoubtedly it was cheap. You folks were facing bankruptcy at one time. You were facing a competition that might

have resulted in bankruptcy. A. Well, that's collateral — that's not the reason it was done.

Q. And you had the opposition of the strongest men in the government at a certain time, didn't you? A. Yes.

Q. And when the matter was critical you took the power of the board of directors and consecrated it to the executive committee, of which Mr. Shonts was chairman, and in the face of these oppositions that I have described, and more that you would remember that we could put on the record if we had the time to do it, you were pulled through — you were saved. You were pulled out of the hole with preferentials that you had never thought of in 1910, with all your expenses and disbursements provided for by accumulative preferentials, and with a city that had been fighting you left in the rear. Now, you never would have got that if Prendergast hadn't been converted, would you? A. We never would have got it unless the Board of Estimate was converted.

Q. But Prendergast had to be converted? A. All those gentlemen had to be converted.

Q. You had got Gaynor already established. I remember when Mr. Williams said: "The office of the city is in the City Hall." That doesn't concern you, only as being a stockholder; but you had Mr. Gaynor cinched — you thought you had. You thought you had Gaynor cinched, but you knew you couldn't get Mitchel. You knew it wasn't worth trying. Dit not you gentlemen reach a point where it was said in so many words, in substance: There is no use of trying for Mitchel? A. No, I don't know that we did.

Q. You thought you might even get him? A. Well, I didn't think anything about it. We formulated our proposition and tried to convince the board and not any individual of the board.

Q. If you hadn't gotten Prendergast to go back on all the things that he had said and all the things that he had printed, and against all the things he had said in the newspaper office, you wouldn't have got the number of votes sufficient to put your proposition through, would you? A. If they had all opposed it, we wouldn't have got the proposition through — but they voted for it.

Q. Do you mean to say, now, that Mr. Prendergast's name was never mentioned in any conference in which you were a partner?

A. I never have said that. I don't know but that his name was one of a great many others.

Q. Wasn't there a time when Mr. Prendergast was declaiming and orating against you that you did fear him? A. Yes.

Q. And when was that? A. You have that. You will have to take that from the records. I don't know as to the time it was.

Q. When did you first have an assurance that Mr. Prendergast was going to vote for you? A. I don't recall it at all, when that was.

Q. Now I want to switch your thought a little. I want to talk about the elevated business for a few minutes. Do you remember the time, Mr. Berwind, when the elevated structures in New York were denounced by the officials as monstrosities and eye-sores and things that must be gotten out of the way? A. I have read all kinds of things about them.

Q. Do you remember any thing like that? A. I think I do.

Q. Do you remember the time that they tried to put the elevated out of Battery Park because it was an eye-sore? A. I think so.

Q. Well, do you remember the speeches and addresses of public officers, taxpayers and newspapers of all kinds substantially longing for the day when some change might be brought in that would do away with the elevated railroads? A. It is not extraordinary in this great city of ours to hear all kinds of views expressed on all subjects.

Q. Do you remember when the Metropolitan was agitating for a subway in 1906 and 1907, that that was one of the arguments — that the elevated railroad would be done away with? A. I couldn't recall it, but I remember those discussions in a general way.

Q. And do you remember that the Center Street loop was projected on account of the plan to put an elevated on the Bridge over the Delancey Street bridge. A. I remember that.

Q. You are aware of the fact that up to a few years ago the elevated railroads were generally denounced as unbeautiful things and as nuisances? A. I am.

Q. And there were very many criticisms about the government granting leases for perpetual use of structures like that? A. Yes.

Q. Now, when did it occur to you, Mr. Berwind, that the city

authorities, the New York City authorities, began to look upon elevated railroads and elevated extensions as very important things to be gained for the City of New York — when did that happen? A. I can't think of the date, but I will give you the circumstances. When traffic became so congested, the question of moving the people was very imminent and it was necessary to arrive at something that would remedy existing conditions in the shortest possible time. The investigation of that condition by the Public Service Commission and by all those who are interested in transportation developed the fact that the elevated railroads, by third-tracking, could reach that conclusion and that gave rise to the discussion of third-tracking the elevated railroad.

Q. That was for immediate relief — temporary relief? A. Not only for temporary relief.

Q. Well, new subways were being built, wasn't that the way it began — for relief while the subways were being built? A. And that was the nearest thing available.

Q. The nearest thing available — and the first talk was that it would be a temporary arrangement, wasn't it? A. No, I didn't hear that.

Q. Something like this monstrosity across Park Row? Now it is permanent. A. The idea was that that would give immediate relief.

Q. Exactly! Well, now, you gentlemen had been — at least the Manhattan people had been — urging for years and years to get the privilege of third-tracking? A. Yes.

Q. And you had been opposed, not only by the public officials, but by the prominent citizens of New York, property owners all along the line, who said the structure was bad enough without putting a third track in the middle of it, without second-storying and all that sort of thing. You remember that, don't you? A. I remember the third-rail elevated system was attacked, yes, sir.

Q. Then suddenly there came a revelation, and the elevated third track was the most important thing to be got. A. When the public is frantically in need, it is willing to give up something. That was the only outlet to get quick relief. That was the reason that was changed — not out of any consideration to Manhattan. Not at all. It was a question of relief that they wanted.

Q. I find, Mr. Berwind, in the negotiations and pamphlets that I have read statements by city officials in explanation of their position, that they were afraid if they didn't give you gentlemen the right to third track your railroad, that you wouldn't place, so to speak, on the matter of subways. A. Well, I don't know about that. I don't know that that was ever brought up as a factor.

As a matter of accuracy, when we, through one of our officers announced in a letter that we were withdrawing it, we announced that we were ready to go ahead with the elevated movements.

Q. And that proposition was not accepted — that offer to go ahead with the construction of the third tracking was refused, and thereafter when the great discussion came on, which resulted in new contracts, certain officials expressed themselves that the third tracking privilege, or third tracking proposition, was so important that it ought to be unmolested and that it was so important that they ought to give the railroad practically everything it wanted? A. Well, I never found it in that frame of mind in my experience.

Q. Well, was that simply talk then? A. I never found that the Public Service Commission were ready to give us what we wanted. Never, on any subject without a contest or a discussion.

Q. Well, you had carried your elevated proposition into the subway proposition so that it became a part of the dual contract negotiations, and though the contract is differently expressed, it is in another paper called a certificate. It was really a part of the dual system. And you gentlemen were bound to put that thing through along with the tunnel, weren't you? A. Yes.

Q. And there were some of the city officials that took the position that that third tracking was so important that it must be had, and they were afraid if you weren't allowed to have it in your own way the negotiations would fail — do you remember anything like that? A. I don't recall particularly that attitude; but I know all these discussions of various kinds took place and probably something was done, but I don't attach any importance to that myself.

Q. Well, you know as a general rule contracts that are made for matters that the Public Service Commission has supervision over — those contracts require the approval of the Public Service Commission. That's general, isn't it? A. Yes.

Q. Whenever the Public Service Commission has a work to do,

whether in construction or in supervision, it has always held to its rights to dictate, or at least supervise? A. Yes.

Q. And to be satisfied with the form of the contract and even satisfied with the personality of the contractor? A. Yes. There must be satisfaction in those respects.

Q. There is a standard provision in the contract that the Public Service Commission gets out that the bids may be readvertised? A. Yes.

Q. Or that the contracts put forward may be put out of it, if in the opinion of the Public Service Commission the interest of the city so requires. Now, how did you manage it to get your contracts for third tracking this elevated railroad through without the approval of the Public Service Commission? A. Well, in the first place, the Manhattan Railroad is not a city property; it is not a leased property — it is an ownership property, it is proprietory property with a 999-year lease to us. But the property itself doesn't belong to the city — it belongs to private individuals. Now under that lease —

Q. (By Senator Thompson.) Well, that's the same with all the others, isn't it? A. I think so — I don't know exactly — but if I am wrong I would like to be corrected. I am giving you my impression.

They had a perfect right to do their contracting in that particular work subject to the approval —

Q. (By Senator Thompson.) But in this particular contract — what I think he refers to in this particular contract — something was cut out that was left in all the others. A. Well, I am not sufficiently versed to say exactly what did happen.

Q. (By Senator Thompson.) That's the thing Mr. Moss is getting at.

Q. (By Mr. Moss.) It amounts to this: That the Public Service Commission divested itself knowingly of all oversight of the contract as a document, all oversight or veto over the contractors as individuals. A. Well, you see the difference in those two cases — Mr. Counsel if I am correct — I am merely suggesting this — is that the Manhattan Company is a private company. The subway tunnels are owned by the city and they are leased from the

city, but the elevated railroads are entirely paid for by the private capital and reserve a right, subject to the approval of the Public Service Commission —

Q. Supposing Manhattan as a private company, owning its own property, and it is doing a Public Service work — do you mean to say it isn't subject to the Public Service Commission? A. Not with reference to the way it should dispense its money.

Q. But it is as to how it shall change its structure in the street and how it shall manage transportation? A. As far as the relation goes.

Q. Every private company that undertakes to handle these propositions has to come under the Public Service Commission? A. I agree with you perfectly on the question of regulating the transportation.

Q. Now, when it comes to the work upon the street, the changing of the railroad running on the street of the City of New York, why it is fundamental that they couldn't do a thing unless the Public Service Commission let them do it? A. Well, really, you are getting me into depths of legal matters. I would rather have my counsel take that up.

Q. I don't want to do that, but I am going to lead that thing up to some thing that you ought to know as a man of business. A man of business is very much better than a lawyer.

Senator Thompson.— To straighten this matter out. With reference to the third tracking, there are four different ones. Two of them went to your folks: One for your Manhattan elevated and one for your extension. And then two of them went over in Brooklyn. Now three of them provided for supervision, but one of them didn't. See? That's what he is getting at. A. Well, I can't enlighten you on that. I would gladly if I could do so.

Mr. Quackenbush.— I want to call your attention to this fact. As to the expenditures for the third tracking of the elevated, Manhattan elevated, the certificate itself provides for the utmost supervision on the part of the Public Service Commission. So far as the financing of that is concerned, there isn't a dollar that hasn't been accounted for. The point is that in advance they didn't have to get their consent as to the selection of the place.

Senator Thompson.— That's true enough, but what I want to make clear, and I think it is only fair, is that we haven't any arbitrary right to go ahead and charge what we please. We have got to submit our accounts for that, and when we get all through then whatever is fair is the thing that is going into the calculation.

Mr. Moss.— Now certain contracts were preferred by this company? A. I don't want to have any misstatement about what I am saying. We claimed that during the negotiations we would not accept a certificate for the third tracking that didn't give us the right to select the contract.

There is no question about it. We said, and I was present and said it myself that we wouldn't assume the risk of keeping those trains operating if we had to let the contract to public letting. We were going to select that contractor, or do it ourselves. But, as to the financial business, that's all got to be checked up.

Mr. Moss.— The same thing happened in Brooklyn with the worst railroad to take care of. We have the Mayor's opinion upon that. And a common contractor went in there and kept the system running and rebuilt the railroad and strengthened it and third tracked it ad did everything and submitted themselves to all the authorities of the Public Service Commission. But what has developed in the contract over there is not known. Now, here is Mr. McAneny's testimony:

> "The New York Municipal Railroad Company conceded the right to submit their contracts to the Commission, but we were unable to gain that from the Interborough. In the matter of third tracking, they contended that inasmuch as that work would have to proceed during the operation of that road, it would be attended with danger, and it was; that they should be permitted to select their own construction. I do not recall that there was any serious opposition to that plea from any quarter. They were granted the certificate without pressing that demand. They were granted the certificate without pressing that demand as they would not have it otherwise."

Now, what power had you with the Public Service Commission

that put them in that attitude at that time? A. Well, I don't know. Our counsel explained to you the position.

Q. But here are words, which I will quote from the record of the Committee:

> "I think perhaps the general impression of the members of the conference, although there was no flat declaration to that effect, was that if we persisted in our demand to the right to supervise the third track construction, such persistence would result in the termination of the negotiations."

Now, that's what I meant when I was leading you up to extend your recollection about prominent members of the city administration, and I particularize Mr. McAneny now, holding the opinion that the whole negotiation before your marvelous gift of subways to the City of New York hinged upon your demand that the third tracking should be without the supervision of the Public Service Commission. Now, how did you get them there? How did you get Mr. McAneny in that position? Now, he is a pretty strong man — a man not only of many words, but of stubbornness, and how was he convinced that the city needed your third tracking of the elevated railroad so much that it would give you the privilege to do it on your own terms, and that if you couldn't do it on your own terms the wonderful dual negotiations might all fall through? How did you get him in that frame of mind? A. You will have to ask the negotiatiors that — and our rights in the premises, whatever they may have been.

Q. But I don't assume that you had all the negotiations. I assume that the man you paid so liberally had some of them. But I do assume that you, perhaps the largest stockholder in that company, I think you said you were, and upon all of these committees, knew something about what was going on? A. I did.

Q. Well, what do you know about that? A. Well, I don't know that we had any dealings with Mr. McAneny at all, excepting that we wanted to third track those railroads, beacuse it was a dangerous proposition.

Q. Well, now, look at the reasoning side of this? A. The reasoning part of it doesn't concern me.

Q. It must? A. It doesn't because we made a straight business transaction of it.

Q. It concerns us; and I want to tell you, Mr. Berwind, that when it comes to writing up the report of this Committee, I don't desire that any word shall be said in that report that reflects upon your company or any one in it until everybody that could have a knowledge of any of the details has had his chance upon the stand to give it. A. I have given you mine. All I know.

Q. That's why I asked these questions. A. You can have it all.

Q. And I ask you also because I know as a matter of psychology that very frequently some little chamber of memory is suddenly unlocked. A. Theer is no chamber to unlock on that subject.

Q. Well, not if you have devised that it shouldn't be unlocked. A. It isn't there.

Q. Nobody knows what is there until the key is turned. A. But I am afraid, Mr. Counsel, that you are a lawyer, and I am a business man. You are looking for a place to find suspicion. I am looking for straight business propositions which are developed in a business-like way.

Q. Now, you characterize me in a nice way! A. I mean it in a nice way.

Q. I understand.

Senator Thompson.— Perhaps there is a misunderstanding.

Mr. Moss.— I haven't misunderstood Mr. Berwind, but having said what he has, it gives me the privilege of saying this —

Mr. Berwind.— What?

Mr. Moss.— That having been employed by this Committee to investigate this remarkable situation, there seems to me to be a trail, and I am going to follow that trail — that's my business.

Mr. Berwind.— I don't know what that trail is, I have no knowledge of it, and to cut the thing short, I want to tell you I have no knowledge of such trail either directly or indirectly or by any device or any method or any negotiation.

Mr. Moss.— I am going to give you every opportunity that I can devise to put yourself on record so that it never can be said that you didn't answer because I didn't ask the right question.

Now, you see, Mr. Berwind, the further and further we go along in this matter, the more and more certain inferences appear.

I may be wrong in the way that I look at it, perhaps it is because I have investigated some things in too little detail. A. I think you are.

Q. I am anxious that every man who sits on that stand shall know exactly the thoughts that are in my mind in pursuing these inquiries.

Now, I recited to you at the beginning of your testimony circumstances which showed that starting as a real benefactor to the City of New York, using your own money, and even when you got a little stiffer, letting them have profits and lots of them, you departed steadily from that course, until finally you landed in that which you have yourself characterized the "dual contract," and you did that in the face of constant opposition and you had the courage to do it, and something gave you the courage to do it. A. I see your point.

Q. And here at last we find in line with what I have discussed with you the subject of the third tracking coming in, and we find the position of Mr. McAneny which I have discussed with you.

Now, then, wasn't there something in the personality of J. F. Stevens that made you desire him at one time for the contractor? A. Not to my knowledge.

Q. Haven't you got a subway construction company? A. We have.

Q. Is it doing a section on the subway? A. It is.

Q. The work that that subway construction company is doing in that subway is a model, isn't it? A. I think so.

Q. It is better than any other? A. I am willing to say that. I believe that it is.

Q. It has contracts running up to $10,000,000, hasn't it? A. I don't know how much — quite large sums.

Q. It is thoroughly equipped, isn't it, for subway work? A. Yes.

Q. And has excellent engineers? A. The best, I think.

Q. Its officers are overseers of the Interborough also, are they not? A. Partly.

Q. And it is in close touch with the officers — the engineers of the Interborough, isn't it? A. What is that?

Q. It understands what the Interborough situation is, doesn't it? A. It does.

Q. It knows about the Interborough structures? A. I don't think it knows about the elevated structures—it is particularly gotten up for the subway.

Q. But it had to deal with the Interborough right along because the elevated is over the subway at certain points? A. Yes, that's true in a way. The object of the Subway Construction Company was in the construction of subways, and that's its particular function.

Q. It has had to learn the situation? A. That's true.

Q. And its men are now New York men, aren't they? A. I think so. Oh, yes.

Q. The company is surrounded with a New York atmosphere. It knows New York and it knows its problems—it knows its congestion problems relating to transportation, etc. A. Yes.

Q. Was that company doing business in 1913—I mean in 1912 and 1913? A. Yes.

Q. Was that company asked to bid upon the third-tracking of the elevated railroads? A. I don't think it was.

Q. Why not? A. For this reason: The third-tracking of the elevated railroads involved peculiar work. It involved foundation work. It involved steel construction and it involved traffic. The traffic end of the situation we could have handled, but there are people who are better posted on the foundation work than we possibly could have been, and there are people in the elevated construction work, the erection of iron work, that are much better fitted for that than ourselves.

Q. Couldn't the Subway Construction Company have engaged Terry & Tench just as well as Gillespie did? A. Well, excepting under a bid, the same as we asked.

Q. Exactly. Had Gillespie had any experience in elevated railroad work? A. Oh, yes.

Q. Had he? A. I don't know particularly with reference to elevated, but in steel construction he had.

Q. Steel construction? A. Well, that's what it is.

Q. So has the Subway Construction Company? A. No.

Q. Don't they put up steel in the subways? A. Yes, but not that kind of steel, as I understand it—I am giving you a director's version of this.

Q. There are lots of people who can put up steel work, but you are talking about the question of putting up steel work in the subwas construction. What experience had Gillespie had in that work? A. You will have to ask that from Gillespie.

Q. And when you gave the contract to him, he gave that part of it to Terry & Tench, because they were expert in that particular work. Did they have any experience in third-tracking when trains were running? A. No.

Q. Not a bit? If you had allowed your own subway construction company to bid on this work and they had been fortunate enough to get it as a lowest bidder, you could have asked them to associate Terry & Tench? A. Well, I will answer that very briefly. The directors of our company conceived that our executive officers, who are engineers and who are thoroughly alive to the needs of track traffic, who understand construction and who understand the needs of this great city, to carry on its transportation, know who can do that work best and how it can be done best, and their whole intention was to give it the most efficient service, to get the best construction with the least risk, in the shortest period of time.

Q. But Stevens had no experience in work of that kind? A. Oh, yes, he did.

Q. In third-tracing while trains were running? A. That's a mere technicality.

Q. I thought you put it forward as a very important thing? A. I said the third-tracking means the construction of a new track to continue transportation with all that goes with it. But the third track is a mere detail of the whole thing.

Q. With the trains running? A. And the superstructure, and the building of this.

Q. What experience did Stevens have of that kind? A. Well, you will have to ask Mr. Stevens that. That isn't the duty of our directors to say.

Q. What did you hear said that told you of his experience? A. I told you what was said.

Q. Well, wasn't it the opinion of Mr. Shonts, and didn't he carry it out? A. Unquestionably it was in the opinion of Mr. Shonts, but not he alone—the entire staff.

Q. But wasn't it his position that bore his argument—his per-

sonality? A. Well, the president and the personnel of every board have a very decided influence in framing the action of every board.

Q. Exactly! And you followed Mr. Shonts in selecting Mr. Stevens, or in considering him? A. We got the best advice of our executive officer.

Q. Exactly!

Senator Thompson.— I don't know whether I ought to give any compliments or not, but the reports of such experts as we have employed show that your company, which is the Rapid Transit Construction Company, with one other, are doing the best and most careful work, according to specifications, that is being done in the subway in the city. I think you are entitled to have that said, if you want it. A. We think so. We are trying to get all the dangerous points in the hands of our own construction company, under our own supervision. For instance 42d Street. We tried to get Times Square, and didn't succeed.

Mr. Quackenbush.— Let me make a statement for the information of the Committee. This is about Times Square.

Mr. Berwind.— I didn't mean to say that we got Times Square —we made an effort to get it.

Mr. Quackenbush.— When the Public Service Commission proceeded to let the work for the construction of the present subway at Seventh Avenue and Times Square, they advertised for bids and got bids. The first lowest bidder had no comprehension whatever of the danger that there was there. They threw out the bids on our protest and got new bids, and the next bids came in and showed also that he had no comprehension of the danger.

I personally protested against these things and prepared letters and sent them to the Board of Estimate & Apportionment and the Public Service Commission. The only accident we have ever had in the history of the subway occurred because of that contract—the people were incompetent and handled those cables there. It was almost supernatural, the accuracy with which we foresaw the thing that did happen, and the only time that the subway was put out of business for a whole day was because of the work that they did at

Times Square, and over 500 people were injured there, and the whole thing has cost us over $200,000.

Now, it was just on account of that sort of thing that we said we didn't want the lowest bid people interfering with third rails.

Mr. Moss.— Well, that's no reason why the Subway Construction Company might not have undertaken to do this work, but perhaps a very good reason why it should have done done it, because it would have been in the family, but the point I am making and I want you to get it—Mr. Quackenbush and all of us—that there must have been something in the personality of J. F. Stevens, he being the first one that came on the ground—there must have been something in what he was or who he was or who he was connected with. There must have been something in J. F. Stevens, a man without a client, to bring him before that board of directors with a proposition practically in Shonts' hands. We have had him on the stand—Mr. Stevens—and we know how thoroughly he was in Mr. Shonts' hands. And I am ringing on the personality of Stevens in this situation.

Now, who was your Chief Engineer in the Rapid Transit Subway Construction Company? A. I think Mr. Pegram.

Q. Isn't Mr. Pegram in his field, in your opinion, the best engineer in the City of New York? A. I don't know that he is the best, but I consider him very high up in his profession, and one of the best. We look upon him as one of the big engineers for our business.

Q. For your business — for your business problems, the problems of your company — you consider him the best man you could get to pin to and hang to, right straight along? A. We think he is extremely good. We have every confidence in him.

Q. Now, what reason you to suppose that J. F. Stevens is better for that work than Pegram? A. I have only this reason — I can't make a comparison between the two men because one is a practical engineer working on the line all the time and tending to the duties of our company — Mr. Stevens is a man well-known all over the country and identified with prominent railroads in the west, and our executive made it very plain to us, and we know from record that he made a very good record for himself in the

west. He was chosen as Chief Engineer of the Panama Canal. Did wonderfully good work there.

Q. Well, that was excavating work down there? A. Well, some of it was. It was engineering work. Well, now, he had also been a railroad engineer where they had done a great deal of work where traffic was continued at the time that construction was going on. He was a man of broad experience, a man who had superintended the most important work in the country. He was represented to us as one of the most competent men that we could select for certain purposes.

Now, the great danger in third-tracking was a big point involved. It was necessary to supervise that in an intelligent way and to know all about it and at the same time do that work on the lines of the railroad in such a way that traffic was not interrupted, because the trains were running very closely on there, and one accident would have lost the company many millions of dollars.

Q. Well, you didn't give it to Mr. Stevens? A. Well, I know we didn't, but you asked me why he was brought in, and I have given the reasons.

Q. You gave it to Mr. Gillespie. Now, what was in Mr. Gillespie that appealed to Mr. Pegram? A. Why, as I understand it, there were five or six firms invited to bid, and we thought any one of these firms we could accept bids from.

Q. And it didn't include the Rapid Transit Subway Construction Company? A. Well, we made up our minds that we had enough to do, and secondly that our organization was not fitted for that particular structural work that was being done. It was more laid out than our subway work.

Q. Well, now, when that came up and Mr. Gillespie, as I understand it, made the lowest bid, it was then suggested that Terry & Tench are people who are specialists in certain kinds of work. I understand that. Who are the others? A. Snare & Triest, another concern were also a concern of national reputation and very proficient in their way. And I understand from the executive, he told us that he had been in conference with Mr. Gillespie and said that he had the lowest bid, but that these gentlemen had bid and it was very important to get this work done in the shortest possible space of time with the greatest efficiency and with the element of

damages reduced to a minimum—and if he could associate himself with these men it would mean much to us, and that he would award them the contract on their own terms as then bid. Now, that's all I know. That's the history of it.

Q. That's the history of it? A. That's the whole thing in a nutshell, as I understand it.

Q. What was there in Gillespie, Terry & Tench and Snare & Triest to beat the ability of Pegram? A. Well, I gave you the reason. It was because our construction was particularly adapted to subway construction. It is carried on for that purpose. Incidentally, work of repairs, etc., on an elevated, while traffic is going on, is a very different thing from creating a new structure.

Q. And your own engineer, Hadley, is probobly the best informed man in the elevated railroad work? A. I am very glad you think so, because I agree with you.

Q. Well, did you know Mr. Gillespie's connections? A. I did not.

Q. Did you know whether he was desired by anybody for that work? A. I did not, no, sir.

Q. When Mr. Stevens was named, or after he was named, did you know that Mr. Morgan objected to him? A. No, sir, I did not.

Q. Did you know that Mr. McAneny objected to him? A. I did not.

Q. Well, we discussed that yesterday. Did you know that Gillespie was friendly with Morgan? A. I did not.

Q. Did you know that Gillespie and Davidson were directors together in the Liberty Bank? A. I did not.

Q. Did you know that Gillespie helped to finance Terry & Tench in the Liberty Bank? A. I did not.

Q. Did you know that Gillespie carried one note for $50,000? A. I did not.

Q. Did you know that Davidson, of J. P. Morgan & Company, was closely associated with Gillespie, and that they were brother directors in the Liberty Bank? A. I did not.

Q. Did you know that Gillespie had come in close into the steel crowd, as we call it? A. I did not.

Q. Did you have any information at all that Mr. Gillespie was

a man very acceptable to the Morgan firm, which was financing your dual enterprise? A. No; never heard so.

Q. Did you know that the Morgan firm put Gillespie into the Equitable Life as a director? A. I did not.

Q. You never suspected that there was any interest or relation or closeness between your financiers, your financial agents, the Morgans, and Gillespie? A. I never did.

Q. The man who got the contract for third-tracking and sublet most of it? A. No, sir, I do not; or no suspicion of it.

Q. Do you remember how much of that third-tracking contract Mr. Gillespie kept for himself? A. I do not.

Q. Was it more than a million dollars? A. I don't know.

Q. My impression is that Gillespie did about a million dollars of that — retained about a million dollars of that work and sublet the rest to Snare & Triest and Terry & Tench. What was it that Mr. Gillespie retained five per cent. for? A. I do not know.

Q. You realize that in allowing this contract — the Public Service Commission in allowing this contract to be made without their supervision, there was no public authority to be inquire about those questions and no one to do it unless the directors did it. Have the directors ever looked into these questions? A. The directors have an executive staff eminently competent to carry on their business, and they carry it on for them.

Q. Have they asked the staff to look into any of these questions? A. They require their staff to do it — they don't ask them!

Q. I want to quote from the testimony of Mr. McAneny further (page 503 of the record):

> "My opposition to these contracts was based upon the very clear fact that they were not to the advantage of the city. If they could be defeated it would be to the advantage of the city —(He is referring to the Stevens and Gillespie contracts)— to have them set aside and a different basis established that would be sufficient in itself, without paying attention to additional rumors of any kind floating around without apparent basis.
>
> "They sent the certificate to the Commission with a blank for a percentage, and I have been informed by Mr. Maltbie

that ten per cent. was the figure they were talking about. (He is there speaking of the Stevens contract.)

"I did not subsequently file a protest against the so-called Gillespie contract. (Next page.) The Stevens contract came within the perfect view of the Public Service Commission. There was an opportunity there for them to disapprove, and, therefore, I urged them to do that.

"The Gillespie contract, as I understand it, did not require that proof." (Pages 516 and 517.)

Now, when that Stevens proposition was on foot, it actually went to the Public Service Commission, according to this testimony of Mr. McAneny? A. Yes, sir.

Q. And you then and there found that Mr. McAneny was opposing it? A. Yes.

Q. And opposing it upon grounds which I read to you out of the clippings? A. Yes. He was charging that there would be $27,000,000 expended and $7,0000,000 profit to the contractors — that was the substance of his arguments.

Q. Now, finding out that Mr. McAneny would oppose a thing like that, then you gentlemen, in your negotiations, took the position that you would insist upon making a contract for third-tracking that would not be subject to the Public Service Commission, didn't you? A. Yes, sir.

Q. The Stevens matter went before the Public Service Commission and McAneny opposed it? A. Yes, sir.

Q. Now, then, having an experience of what you might go through in the Public Service Commission, then you gentlemen took the position that you wouldn't do business with these people, if they required you to submit your third-tracking proposition to the Public Service Commission, according to McAneny's testimony which I have read to-day. And the Public Service Commission fell down for it, and for fear that you gentlemen would retire from the field, they let you have your third-tracking without supervision, even while McAneny know that the Gillespie proposition was pending at five per cent.

Mr. Quackenbush: There is confusion there, Mr. Moss. Here is the fact of the matter: The so-called Stevens proposition was

submitted to the Public Service Commission in June, 1913. Mr. McAneny's criticism came out in July, 1915. The certificates were dated March 19, 1913. So you see the cause which you refer to was in the certificate.

Senator Thompson.— The certificate was signed March 19. The application of the Public Service Commission, in my record for the Stevens contract, was made in May.

Mr. Quackenbush.— The latter part of May or the early part of June.

Senator Thompson.— The directors' meeting came up the latter part of June; that came before the Public Service Commission for action before the Commission in July?

Mr. Quackenbush.— And Mr. McAneny came down from the north woods and made these statements, and then Mr. Shonts went to Europe, and then in the fall the Gillespie matter came up.

Mr. Moss.— "There was an opportunity then for them to disapprove, and I urged them to do it. The Gillespie contract did not require that approval." (From Mr. McAneny's testimony.)

Now, I have come down to this single question: How did you get him over? A. (By Mr. Berwind.) You will have to ask somebody else—through the ordinary course of business, that's all.

Q. You said you inconvenienced them and made them give up substantially? A. Did I use that language?

Q. The way to make them give up was to inconvenience them? A. I don't think I made that remark. I have no recollection of it.

Mr. Quackenbush.— I am going to make a speech on that before the Committee closes. I won't make it now.

Senator Thompson.— I assume that you do not recall all of the details of this negotiation offhand, from your examination.

Mr. Berwind.— No, I don't keep them all. They ran over a long term of years.

Mr. Quackenbush.— Weren't you abroad part of the time?

Mr. Berwind.— Yes, I was abroad.

Senator Thompson.— Who of the executive committee were mostly associated with Mr. Shonts?

Mr. Berwind.— Mr. Vanderbilt, Mr. Freedman and Mr. Belmont to some extent, and myself—those were the principal men.

Senator Thompson.— Those were the principal men?

Mr. Berwind.— I think so.

Senator Thompson.— I assume you were familiar with these various offers that were made by the Interborough?

Mr. Berwind.— I think every one of them, when I was here, every one of them that was made came to our knowledge the next day.

Senator Thompson.— Was your railroad ready to carry these offers out—had they accepted?

Mr. Berwind.— Well, I think we withdrew our offer. I don't think they were ever in shape to be accepted.

Senator Thompson.— They were letters which were to be changed and thrashed into shape. I realize that you would have to have a lot of phrases added to those things, but a letter is merely the substance of your offers and you stood behind the substance of your offers up to the time you withdrew them.

Mr. Berwind.— But I think a record could be furnished the officers of the company, because those are clear records.

Senator Thompson.— As our record discloses today, you had a city board elected and the Mayo ron a platform opposed railroad ownership?

Mr. Berwind.— Yes.

Senator Thompson.— You found that of the offers that you made, the first offer was the best offer for the city, if you were to have any partnership with the city at all?

Q. (By Senator Thompson.) And your offers continuously grew less favorable to the city? A. (By Mr. Berwind.) That's right.

Q. And then all those offers were refused until the last one was really the least beneficial to the city of any of them? A. Well, there were continually new factors entering into the proposition.

Q. In reality the last offer was the worst so far as the city was concerned—they had to put up more money every time there was an offer made, and they got less preferential? A. Well, we looked upon it in the light that we were in a safer condition on the last transaction than we were during the others.

Q. Now, you take your first offer: You gave the offer to build entirely with your own money and to let the city advertise it and have it in forty-nine years, and then you made an offer to build a part with city money, where the city put in less than half and gave the city preferentials? A. Yes.

Q. And then the last offer was where the railroad put in less than half and the railroad got the preferential participation. Now, with those things in mind, and the fact that when the dual contracts were finally signed your railroad refused to permit the supervision of the Public Service Commission to third-track, that was followed very soon by the Stevens contract which was presented before the Public Service Commission, and the circumstances given out in that connection by Mr. McAneny, and the fact that no contract had ever been approved by the Public Service Commission, with a percentage, plus cost, does that raise in your mind, as a business man, any situation that ought to have investigation and an explanation? A. I don't think so at all, because as these negotiations were developed new phases and new conditions came up. They were constantly changing just like kaleidoscope. It went from one to another, and as we discovered our changes we increased our demand. The city, on the other hand, was playing poker. They held up the Tri-Borough and held it over us as a menace, and we found it out—that's all. That's the only reason that happened.

Senator Thompson.— Well, the city played a bad game? A. They had the cards to play with. But we discovered they were holding us up.

Q.— Well, I don't know anything about the game. In the final contract practically all objectionable features were limited. A.

I see you have drifted your mind, but I don't think there were any irregularities.

Q. Is there any further statement you desire to make? A. The matter of coal contracts has been investigated here and it is left in a state which I think is very misleading to the Committee, and very unfair to me. I would like to have the privilege to say something in that regard, if you will let me have the time to do so at the proper time.. I think you have got an entirely wrong view of the situation, and I think the conditions are just the reverse of what you think they are.

Q. Would you like to come in this afternoon at half past two?

Mr. Moss.— We haven't finished that, Mr. Chairman; I was holding off. A. You intended to go into that?

Mr. Moss.— Yes, but there were certain lines of information that I wanted to get with reference to other contracts, but I am perfectly willing that he should make his statement at any time. A. Well, I want to explain the whole situation.

Mr. Moss.— You will not assume that we have a particular conclusion upon the matter. We simply developed testimony as it came to us, but there are certain matters that ought to be looked into before the matter is closed, and that would include Mr. Berwind's testimony, naturally. A. Well, the reason that I want to make a statement is because I am at the head of the coal-mining company. I am also a prominent director in this company, and I have leaned backwards to give them cheaper and better service than they could get in any other way, and much more to my disadvantage, and I want to make that clear to the Commission.

Senator Thompson.— Well, if you will come in at half past two we will take that up.

(Suspension until 2:30 P. M.)

AFTERNOON SESSION.

The meeting was called to order at 2:45 P. M., Senator Thompson presiding.

Senator Thompson.— Inasmuch as this is to be a question about coal, and as Assemblyman Baxter is a coal merchant, I am going to ask him to sit as chairman while you are giving the coal explanation. (Assemblyman Baxter takes Chair.)

Mr. Berwind.— Mr. Chairman, the question of the supply of coal through the Interborough was discussed by this Committee, if I am not mistaken from various sources. I read that evidence, and it is very incomplete and very misleading, because it is incomplete.

The Interborough Company is one of the most exacting contractors, I repeat one of the most exacting contractors that you will find anywhere. You can all readily realize that if the company were to stop for fifteen minutes, much less a day or two, without fuel, that there would be a riot in New York. Now, therefore, it is of the greatest importance to commence with that. There should be an adequate supply of coal at all times and that supply cannot fall down. That is the first consideration.

Another consideration is that they should have the highest heat units. And for the operation of a plant, especially where stokers are used, a very uniform and high quality of coal is eminently and absolutely necessary to get the most economic results. In addition to that, the Board of Health of New York are very exigent in their requirements regarding smoke. There are but few bituminous coals, relatively few, that can be used in this city without violating the law, and, therefore, that coal which has the least smoke and the lowest matter is the one which the city requires.

Then comes the question of the best and cheapest way for a company in this position to maintain its requirements of its uniform quality of coal, and the question of getting the best service, getting the largest amount of result for the money spent.

This company, before I went in in the early days when it was first consolidated, had in mind the purchasing of a large tract of

land, upon which they proposed to store 50,000 or 60,000 tons of coal as a protection against stoppages of the mines, strikes or other difficulties and embargoes. This point was one which involved a great deal of money, not only because of the purchase of the land, but the minute you put coal in storage in large blocks, you expose yourself to many disabilities. First of all, the deterioriation of coal which lies a long time on a pile is very significant. The danger of spontaneous combustion is always present, too, with bituminous coal, even of the highest grade. The cost of putting coal on that pile and picking it up again and sending it into a power house is always attended with large expense. Therefore, I think to put it mildly, this company if it had pursued that course would have been put to an expense of some thirty to forty cents a ton, at the least cost, to cover all the objections to a storage plan.

At this juncture, I was appealed to on the question of coal, being the president of the Berwind-White Coal Mining Company, who are the largest producers of bituminous coal in this country. We have a superior quality of coal, which I feel it isn't necessary for me to state. The price is nailed on the wall. It extends to $300,000,000 a year by that price, which is from twenty to thirty cents a ton lower than any other bituminous coal. The price is there to show for it — and the price is there.

I came along and I said:

> "Gentlemen, you can avoid all that building of the plant. You can avoid the handling of coal in that way and that expense of forty cents, because I will place at your disposal 5,000 fifty-ton cars which belong to us, our entire mining plant is at your disposal, 300 boats and our docks so that you have a call all the time on that immense amount of stuff; so that there can be falling down unless everything stops, of course — the railroads, etc."

The result of that was that the company decided that they would not build any storage plant; that with that guarantee they had the nucleous of conducting their business.

Then the question came as to price. As I said to you yesterday, I am one of the largest owners of the Interborough, a director of it, and I have leaned backward to serve and to give it the best we

had at the lowest price — at a lower price than anybody else. I want that clearly understood. The result of that was that I didn't make the price at all. I refused point blank to take any more than a certain portion of the supply for the reason that I felt that this company to be absolutely secure should remove every possibility of any break down anywhere, and I insisted that they ought to buy a portion of their coal from the best company shipping over another railway line. That brought in the present company which is a very large company and a responsible company, giving a good quality of coal which doesn't demand as much on the market as ours, as any coal man would tell you, but it is considered one of the best coals here and has good qualities which come within our health laws and in other ways. Prices were then made and I was offered every year a portion of this contract and I took it.

Now, I want to say that no contract that I ever made with this company was as high as our average contracts by a great deal, and that my recommendations to the company on all occasions have resulted in their getting their coal for less than the same quality of coal was sold to anybody else, and their contracts expired with great profit to them.

As an illustration we only have to go back to this past winter. This past autumn the railroads were more or less embargoed. People were in trouble. The Interborough didn't know there was any trouble; but coal was selling here at $7 a ton and a great many institutions were held up, steamers were held up and other businesses of that kind — that did not happen to the Interborough, nor to any customer that we have. We never sell more than three-quarters of our products and ensure our deliveries in that way. We own our lands. We own our mines. We operate our mines. We ship in our own cars and on our own barges, so that there is nobody between the origin of that coal and the delivery and the price at which that coal is sold, is less, owing to the fact that we do seventy per cent. of the business.

Now, the operating department speak for themselves as to the quality of this fuel—its great uniformity, its very high quality of heat units, which means power, and which means cheap coal.

Now, there are dealers here and everywhere who buy from us, who couldn't any more do that business than fly. Why this company would be stopped half the time for an hour or two. The rea-

son I particularly refer to this matter is because I happen to be president of this company and I have given the best that that company has got, at a lower price than other people get it, with facilities that are not required in other businesses. And I did that because I was a director, and I learned backwards to give this company the best service and was interested in its success. That is all I have to say on this subject.

Mr. Quackenbush.— Mr. Berwind, is there anybody interested in this contract or any profit or condition?

Mr. Berwind.— I will answer that with great pleasure. There is nobody that is interested in my company and nobody has ever had a cent of commission or can get it in any way shape or form, nor is there any agency of any kind which this company has paid one cent for excepting the square price. The coal is sold on an analysis basis and what the company wants is the highest grade of coal. The penalty and premium basis is not made for any other purpose than to secure the high grade coal. It is not intended that a poor coal should be sold and then penalize the company.

Senator Lawson.— Does the Interborough buy coal from you on that system?

Mr. Berwind.— It is the same system, only put in another form. They have a regular analysis which they give as to what they require, and then they offer a premium for what exceeds that, and a penalty for what is below that.

Senator Lawson.— That's the customary way that coal is bought by all the big corporations today?

Mr. Berwind.— Not all of them, only by those who are peculiarly well situated. The Interborough has another system which I think is the most complete in the country. They have a system of discharge by which out of every ton of coal that is lifted a handful is thrown out as a sample. This is all deposited in a receptacle and then at intervals ground up and an analysis taken, and on that analysis they either penalize or give you a premium or reject your coal.

Senator Lawson.— How do you account for the actions of the purchasing agent?

Mr. Berwind.— Well, I think you had a very much embarrassed man in that purchasing agent, if I can judge, because we always considered him a very efficient man. I think he is a man very easily embarrassed. But those are the facts and you can verify them. We couldn't do seventy per cent. of this business. For instance, our contract price this year is $3.75 and the company is paying $3.25 a ton.

Senator Lawson.— Well, admitting that the purchasing agent was rather a nervous man, the evidence before our Committee showed that he knew nothing practically about the various coal companies that operated in New York City.

Mr. Berwind.— If he didn't, I am very much surprised that he didn't, because he should know that. I can't answer your question because I never talked with him further than what I am telling you, but every large utility could take our coal. I will tell you that. The Edison Company, the Brooklyn Rapid Transit Company, the Gas Company and most all those that have stationary electric plants can use our coal to advantage, because our coal is peculiarly good for that purpose. It is of uniform high grade.

Senator Lawson.— Prices are all subject to an analysis that is made by their engineers so far as the penalties and premiums are concerned?

Mr. Berwind.— Oh, yes! Absolutely! In their own hands. And we have got to accept what they say, and they don't give us any premiums that they can help, and they do impose penalties when they can.

Assemblyman Baxter.— And what per cent. of ashes?

Mr. Berwind.— About six per cent.

Assemblyman Baxter.— What about the Baltimore?

Mr. Berwind.— I have forgotten what their requirements are, but our coal runs about 17 to 19.

Mr. Smith.— Do these other large companies buy from you on the same standard?

Mr. Berwind.— Not all of them; some of them buy on a straight price; knowing the uniformity of the coal and the origin of the service they don't go through that, but the Interborough started that practice and I encouraged it very much, because it is very much in my favor.

Mr. Smith.— Does the use of your coal eliminate the use of consumers; that is, smoke consumers?

Mr. Berwind.— I think so. They have the automatic stoker. The automatic stoker is very exacting in this regard; that the coal must be uniform, and the higher the grade the less the ash they handle, and the higher the heat the greater the amount of water evaporates, and that's the whole history of it.

Mr. Berwind.— Now, I have made this statement, because, being president of this company, I didn't want any misunderstanding about it, and I want you to question me in any way you want, but I want you to satisfy yourselves by a current investigation of the largest consumers of coal.

Assemblyman Baxter.— About what, Mr. Berwind, does that figure back to the mine?

Mr. Berwind.— That coal figures back about $1.30 — twenty-five or thirty cents. That's a very low price, do you know it?

Assemblyman Baxter.— Sure!

Mr. Berwind.— But the statement was made here that coal could be furnished at $3.02. I know coal here that can be sold at $2.80.

Mr. Smith.— How does your freight here in the City of New York compare with your average receipt from the Interborough?

Mr. Berwind.— I should think our freight rate today is forty cents above it a ton.

Assemblyman Baxter.— How long does this Interborough contract run?

Berwind.— It has two years more to run.

ablyman Baxter.— Well, they are saving a large amount of y on that.

r. Berwind.— The coal in this harbor has sold from $5 to a ton. It is only recently that it has come down to normal res again.

Mr. Smith.— Have you got any flat rate prices under contract s than the forty cent advance?

Mr. Berwind.— Oh, we have some overlapping contracts that in along from $3.25 to $3.75, in between those prices, which is ray above these prices, the lowest of them.

Senator Thompson.— Of course, this price, I suppose, is on account of the peculiar conditions. At present, the coal is higher than it was a few years ago.

Mr. Berwind.— The market price of coal has been very much higher than these contract rates. Our contract rates this year are $3.65 net on an average.

Now, we have overlapping contracts, I want to make that clear to answer Mr. Smith's question, that remained two years ago that had two years to run that are like the Interborough's. They have gone up in value and we are still obliged to deliver on those contracts, but none of these are as low as the Interborough.

Mr. Smith.— Did the Interborough contract include any special requirements of delivery or location?

Mr. Berwind.— It is the most exigent service in the world.

Mr. Smith.— That's of advantage to your company over other companies' delivery?

Mr. Berwind.— Yes. If you own 500 cars at 50 tons each and they are loaded with coal, and you have a dock of your own and you have 300 docks and nobody else has, they have the advantage of all your storage advantages.

Mr. Smith.— What does the Interborough require in the line of available supplies?

Assemblyman Baxter.— In other words, he means how much is it necessary to ship them a month.

Mr. Smith.— I want to know what the Interborough demands, or what they require.

Mr. Berwind.— Well, what they want is somebody that they are absolutely sure can deliver to them the coal desired under all conditions.

Mr. Smith.— Bringing up your arrangement with the Interborough at the present time as to quantity and time of delivery, how many other companies could fulfill those requirements in the City of New York?

Mr. Berwind.— Well, I couldn't answer that without appearing very immodest. I don't think any one could.

Assemblyman Baxter.— Any one who has a contract like that can go to sleep and know that he is going to get his coal.

Mr. Smith.— You understand my inquiry as to whether or not the present Interborough demands by establishing quantity an exclusive privilege?

Mr. Berwind.— Oh, no. It carries no privileges.

Mr. Smith.— But no other company could fulfill the requirements of the Interborough?

Mr. Berwind.— What I mean to say is this: Lots of people could undertake to deliver that coal, but could they deliver a uniform high-grade of coal of that quality and meet the requirements of that railroad and entirely avoid the chances of stoppage? I don't believe any other company is so placed that they could do that, and they couldn't have a half dozen companies do it, because that would give them a half dozen qualities of coal where it comes in on this automatic stoker and under their system of consumption, which would be uneconomical and costly, and if they had to establish this station that I told of for storage, it would cost them forty or fifty cents a ton, under any circumstances, with the danger of spontaneous combustion, deterioration and other considerations.

Senator Lawson.— Do you know, Mr. Berwind, at the inception

of this contract whether the Interborough subjected your coal, along with other coals, to tests in the B. T. unit, so that contracts with you as eventually made would be made practically on the same basis as though the company went out in the open market and let everybody compete and took the contract on that basis of the quotation analysis?

Mr. Berwind.— I don't know how they arrived at their analysis, but they put up a pretty stiff one, and I'll tell you how this all happened. The dealers used to sell coal to the Metropolitan Traction. They used to come to me to buy it, and then they would furnish other coal, a little coal. And it gave a rise to a great deal of trouble and a great many complaints followed and they came to me direct. When that company was amalgamated with the subway I got into the subway business and they said: "Well, this is the coal that gives the best results. Here are all our returns; here are the tests of thirty or forty coals, and the coals that we feel are suitable for this purpose are limited to certain specific coals."

Senator Lawson.— But you do know that before the contract was made the analysis of various dealers' coal was subjected?

Mr. Berwind.— Oh, that's thoroughly known.

Senator Lawson.— Well, we didn't get that information when the purchasing agent was here on the stand.

Mr. Berwind.— It is very proboble he left a wrong impression on your mind.

Senator Lawson.— The impression left by the purchasing agent was that the Interborough really had no necessity for a purchasing agent, because he knew little or nothing about his business on that score.

Mr. Berwind.— I am afraid he was very much embarrassed.

Mr. Smith.— Does the Edison Company buy on the Interborough standard or on a flat rate basis?

Mr. Berwind.— They have tested our coal so much that they buy it flat. They get exactly the same coal.

Mr. Smith.— On an overlapping contract?

Mr. Berwind.— Yes. But not as far back as the Interborough. Would you like to know what their price is? — $3.55 a ton alongside, net.

Senator Lawson.— What about these other corporations when they find that you do business with the Interborough at a cheaper rate?

Mr. Berwind.— They don't like it. But our contract was made with the Interborough a year and a half ago.

Senator Lawson.— It is based on the B. T. system of their analysis?

Mr. Berwind.— It wasn't made on that. They issue an analysis and they require you to comply with it. The price is then determined. Now they bought that coal over a year and half ago at my suggestion that they make a three-year contract; so that they have got the benefit — that's all. If they made a contract with me today, they couldn't get the same figures.

Assemblyman Baxter.— I guess not!

Mr. Berwind.— Being a director of the company and being the head of that coal company, I wanted that thing very clear, that we have leaned backwards and served this company well, and given them the best coal we could.

Mr. Smith.— Mr. Berwind, going back to the other proposition of the Gillespie contract for a moment; when the board of directors of which you were a member approved of the Gillespie contract, did you have in mind the dual contract in relation to the furnishing and use of funds by the Interborough and the city — part by the Interborough and part by the city — the money to be furnished for the construction work of the roads?

Mr. Berwind.— I don't know that I quite catch your meaning.

Mr. Smith.— It is possible that I may be in error. Let me ask you, did the city money have anything to do with the construction work on the third-tracking of the elevated?

Mr. Berwind.— I think not.

Mr. Smith.— Did it have any thing to do with the extension?

Mr. Berwind.— I think it had on the extension.

(Senator Thompson now presiding as Chairman.)

Testimony of Mr. Thos. A. Gillespie, examination by Mr. Frank B. Moss. (Witness is sworn.)

Q. Mr. Gillespie, you are the senior member of the T. A. Gillespie Company, aren't you? A. Yes.

enator Thompson.— I want to make a statement before you go into that. I said this morning that I was going to ask Mr. Hebberd, the former secretary of the State Board of Charities, and Rev. Mr. Farrell and Mr. Potter to be present here this afternoon. The Committee was unable to get in touch with either Father Farrell or Mr. Potter. It seems they are not in the city, but they did get in communication with Mr. Hebberd, who appeared. Under the circumstances, the Committee has decided not to take up this matter until next Monday morning, at which time they will take it up. And, in the meantime, we will endeavor to get in communication with the other two gentlemen.

Q. (By Mr. Moss) It is your concern that has been doing the third-tracking for the Interborough of the Manhattan Elevated Railroad? A. Yes.

Q. When was this matter first proposed to you, or when did you first get any notice that you might have something to do with it? A. Along in the fall of 1913, after Mr. Stevens' company had been so unfortunate, then I took it up.

Q. Do you know Mr. Stevens? A. No.

Q. Who did you know in the Interborough Company? A. I know Mr. Shonts slightly.

Q. How long had you known Mr. Shonts? A. I met Mr. Shonts in 1907, at the time he was Chairman of the Isthmian Canal Commission.

Q. Where did you meet him? A. We were bidding on the Panama Canal work.

Q. Did you do any work on the Panama Canal? A. We didn't get the work.

Q. Was there anyone in the Interborough Company that you knew better than Mr. Shonts? A. No.

Q. Did you know Mr. Freedman? A. Oh, yes; I did know Freedman slightly.

Q. How did you know him? A. I met Mr. Freedman when he was the resident manager of one of the bonding companies, I think the Baltimore United States & Casualty Company.

Q. You came in contact with him in the matter of bonding? A. Yes, when I first came to New York.

Q. Had you done any work for the Interborough Company before this came up? A. No.

Q. Had you bid on any of the subway construction contracts before this came up? A. Yes.

Q. Did you succeed on any of the contracts? Did you get any of the contracts before this came up? A. No.

Q. Did you know Mr. Belmont? A. No.

Q. Did you know Mr. Berwind? A. Never met him until today.

Q. Were there any other members of the board of directors that you had a speaking acquaintance with at the time this matter of third-tracking came up? A. To tell you the truth, I don't know who all the directors were, Mr. Moss.

Q. Well, are there any that you can think of? There was Mr. Vanderbilt, for instance. A. I didn't know him. I knew Mr. Young.

Q. How well did you know Mr. Young? A. Oh, I knew Mr. Young when he was President of the Mortgage & Trust Company.

Q. Was he a man that you had confidence in? A. At one time, but I don't know anything about him in later years.

Q. But, when you did know him, you had confidence in him? A. Yes.

Q. Did you know Mr. Reid? A. No.

Q. Did you know Mr. Lane? No.

Q. Did you know Mr. Pepperman? A. Yes.

Q. How well did you know him? A. Very slightly. I met

him in Washington, and, as I remember it, when I was there and met Mr. Shonts.

Q. Did you know Mr. Sullivan? A. No.

Q. Do you know Mr. Plant? A. No.

Q. Of Morton & Plant? A. Well, I just know who he is, but I don't know him personally.

Q. Well, then, it appears that the man you knew best, at least I should judge so from your testimony, was Mr. Shonts? A. Well, I met him in 1907. I hadn't seen him for a good many years, until this present work came up.

Q. Who told you that there was something doing and that there might be a contract there? A. Well, everybody, I guess, the newspapers and everybody. I think that was a matter of common knowledge, sir.

Q. You got your idea of the Stevens situation from the newspapers? A. Practically, yes. I don't know of anybody else that told me.

Q. Did you see any criticism of the Stevens proposition in the newspapers? A. Well, in a general way, I think I saw a lot. I don't know whether it was criticism or not. I don't know that I would call it that.

Q. Didn't you see the criticism by Mr. McAneny and the newspaper articles? A. Perhaps I did. I don't remember them now.

Q. Those criticisms made while he was a member of the Board of Estimate & Apportionment that charged that there were undue profits in the contract and that it wouldn't be a good contract for the City of New York?—you remember those criticisms, don't you? A. No, I don't remember that particular phase of it, no.

Q. Do you remember that the Stevens proposition got before the Board of Estimate & Apportionment? A. Yes.

Q. Do you remember that Mr. McAneny opposed you? A. I think I heard you read something about that, Mr. Moss. I may have known it at the time.

Q. I read some of it—but didn't you read the newspaper accounts? A. Perhaps I did then—I don't remember now.

Q. You knew that the proposed contract with Mr. Stevens was attacked upon the ground that it would give an undue profit to the

contractor, didn't you? A. No, I don't recollect that that was the case. I don't recollect anything about that.

Q. Well, as a contractor hoping to get in on this third-tracking arrangement, didn't you make yourself acquainted with the ground, the situation, the history of the transaction? A. Not very much. I knew the work had to be done. I knew in a general way what was to be done.

Q. Did you expect that your proposal would go before the Board of Estimate & Apportionment? A. I am not sure about that, sir.

Q. Well, it was some little time ago, Mr. Gillespie, and I know that memory may have to work a little bit. A. I don't recollect that. I never had but little to do with that.

Q. I am going a little slowly and put a number of questions to you, because it might stimulate your recollection.

Now, didn't you know at the time this matter was up that the Stevens proposition met with difficulty in the Board of Estimate? A. I suppose I did know, but I don't recollect it specifically.

Q. Now, being reminded of that, you recall that there was objection by McAneny? A. Well, I must have known it because I read the newspapers.

Q. McAneny said that in his opinion the expenditure would come to about $27,000,000 and that the prospective profits to the contractors in his judgment would be about $7,000,000. Now, I don't ask you to agree with his estimate, but I am only bringing this thing to your mind. A. I never heard of those figures at all.

Q. Did you in taking up this proposition consider whether or not your proposition might not meet difficulty in the Board of Estimate & Apportionment? A. No, I didn't consider that.

Q. You wanted the contract, didn't you? A. Of course, I did.

Q. And, as a business man and something of a practical engineer, you look over the ground to find out what the difficulties of your constructions are going to be, don't you? A. Yes, sir.

Q. And no doubt you looked over this ground to see what difficulties you might have to surmount in getting this contract? A. It never occurred to me at all.

Q. Well, who did you confer with on your own account? Did you confer with a counsel? A. About this work?

Q. Yes. A. Oh, yes.

Q. Was Mr. Cravath your counsel? A. Yes.

Q. Did you confer with Mr. Cravath about the way to go to work? A. I don't think so.

Q. To overcome the difficulties in the way? A. I went straight to Mr. Shonts' office for the first time in years. I would like to have done that work, of course, and I believed that Stevens was out of the running, because unfortunately he had failed, and Mr. Shonts said that they were going to take bids on the work. I was there to tell Mr. Shonts of the work that I had been doing, since he knew of me in the Panama days—I believe that is a proper term—because he had looked up my history. And from that time until 1913 he hadn't known anything about the work unless I told him, and I did tell him that I was fitted to do that work, I believed that I was fitted to do that work. I told him of all the work that we had done in the years gone by.

Q. What did you tell him you had done? A. I told him I had built the Pittsburg Filtration Plant, the Whitney Power Company of New York, the double tracking of the Baltimore & Ohio, part of it, built the Wabash Rural Railroad into Pittsburg; well, I told him all the history of our work up to that time, sir, and those were in those years.

Q. Did you confer with anybody before you saw Mr. Shonts, any adviser? A. No, sir.

Q. Did you tell anybody you were going to apply for the op portunity? A. I don't think I did. I don't recollect at all.

Q. You say that Mr. Stevens had failed, you mean his company had failed? A. Yes.

Q. Did you know that Mr. Stevens had taken this matter up as an individual? A. No, I didn't know anything about it except what the newspapers said and the reason I came to know particularly about the Stevens failure was that we bid on that section.

Q. Well, that was the J. F. Stevens Company that failed, not the individual J. F. Stevens? A. Well, I didn't disconnect them.

Q. Well, did you know that the proposition that was laid before the Board of Directors was the proposition of J. F. Stevens individually? A. No, I didn't know that at that time. No, I did not.

Q. Well, you have since learned it, haven't you? A. I did through this investigation and the newspaper.

Q. Did you discover that the failure of the company that had the subway section up in the Bronx, was the failure of his company, not of himself? A. Yes, I knew that afterwards.

Q. Did you discover that the failure of his company was due to the resentment of men in that company that he hadn't taken in with him on his private bid for the third-tracking? A. Never heard of such a thing until the question was asked here by you and in newspapers the other day.

Q. Did you take into consideration that Mr. Stevens' turning down had anything to do outside of business, I mean that it involved the interests of individuals, not necessarily all business? A. Well, I couldn't, I didn't know it.

Q. I suppose Mr. Gillespie, in answering these questions that when you go into a work of that kind you look the whole ground over? A. Well, that isn't the part of ground that I would care to look over.

Q. Why not? A. The possibility of doing the work.

Q. Exactly, of getting the contract, and one man had fallen down on it. Stevens was a capable man, wasn't he? A. I believe so, that is his representation.

Q. And he had fallen down for some reason. Now you wanted to succeed. Therefore, it seems to me that you would try to see what rock he broke on. Now, did you consider the large interests, the financial interests, that were represented in his company and their relation to his failure or their relation to his not getting in on the contract? A. I certainly did not.

Q. Well, that answers that. Passing it over, did you consider what political opposition he had? A. I did not.

Q. Now, you know politics cut some figure in getting contracts, don't you? A. Not always, but sometimes. Well, in days gone by it might have but not now.

Q. Doesn't even now? A. Not that I know of. It doesn't bother me any.

Q. It doesn't now, but it did once, didn't it? A. I suppose there were favored contractors in certain cities. I have lived in

places where the inside fellows got work they might have got it on its merits, but they got it.

Q. Well, you have got now about ten million dollars worth of contracts outside of this third-tracking, haven't you, in city contracts? A. Me?

Q. Yes. A. No, I haven't any.

Q. The conracts for the water board? A. No, I haven't

Q. You had them, didn't you? A. I had them.

Q. Well, you have had millions of dollars of contracts that have come through public bodies, haven't you? A. My work is pretty nearly all in municipalities, but there were no politics in them, not a particle.

Q. How do you know that? A. Well, not so far as I am concerned.

Q. Well, you are making a pretty broad statement. A. Not too broad at all, sir.

Q. There are members of public bodies here that might be shocked by your statements. A. Let them be shocked, but I know exactly what my position was.

Q. Well, now from your confidence in your statement, I judge you consider yourself an expert and able to say whether or not it was politics that enter into a public job. Now, did you consider the politics of this proposition upon which Stevens had fallen down and where you wanted to get in? A. Not at all.

Q. Did you consider the attitude of the Mayor with regard to subways? A. No.

Q. Did you consider the attitude of the Mayor, Mr. Mitchel, with regard to subways? A. No, certainly not.

Q. Did you consider the attitude of Mr. McAneny with regard to subways? A. Not at all.

Q. Did you consider the opposition that has been in New York for twenty years past towards—for twenty years prior to that time towards extending of elevated railroads in the city? A. No, I don't think I had, other than perhaps reading it in the newspapers, but I didn't consider it with respectto my own business. I could not.

Q. You wanted the contract, didn't you? A. Yes, certainly.

Q. And you knew there was a powerful opposition to that method of lettingout this work, didn't you? A. No, I didn't.

Q. Didn't you know there was an opposition to letting out this work on the principle of percentage? A. Yes, on this particular work, on the straight work; the only opposition that ever I heard of at all was on these extensions, not on this third-tracking work, this straight contract.

Q. Didn't you know of the opposition that was made to a prospective ten per cent. when Stevens was bidding for it? A. I didn't know that there was any ten per cent. contract offered to Stevens other than what the newspapers said.

Q. I didn't say offered to Stevens, but discussed. A. Well, I may have known in the newspapers but it didn't impress me. I don't recollect it.

Q. Were you present when Mr. Stevens testified the other day substantially that he would have been glad to get it at seven and a half? A. No, I was not. I never have been here before.

Q. Oh, yes, how long have you been acquainted with Mr. Morgan? A. I can't say I know him at all. I was introduced to him once.

Q. By whom? A. By Mr. Davison.

Q. How long have you been acquainted with Mr. Davison as partner? A. A great many years.

Q. In what way? A. I have been a director in the Library National Bank for the past sixteen or seventeen years with Mr. Davison.

Q. You and he were fellow directors in that bank? A. Yes, sir.

Q. Was Davison president? A. He was afterwards, yes.

Q. Did you hold any office? A. Director, that is all.

Q. In what other way did you know Mr. Davison? A. I knew Mr. Davison when we were building the Saint Lawrence River Power Company. He was on the Executive Committee.

Q. Was he interested with you in the Jersey Pipe Company? A. No, sir.

Q. Did Davison get you the contract or was he helping you in the Saint Lawrence Power Company? A. Oh, no, I got that before I knew Davison.

Q. Did you become a director in the Equitable? A. Yes.

Q. Was Mr. Davison also there in that Board? A. No.

Q. Were the Morgan people interested in the stock of the company? A. I don't remember now just let me explain about my connection with the Equitable if you please.

Q. Please wait a minute, I am going to give you an opportunity to do that, but didn't the Morgan people control the stock of the Equitable company? A. Morgan, Senior.

Q. He got it from Ryan? A. Yes.

Q. Did you go into it when Mr. Ryan had it? A. I went in in 1908, as I recollect, representing a number of the Pittsburg people and I was selected by Mr. Grover Cleveland. I had been in there for about eight years and I never knew Mr. Morgan's connection with the company at all in any way.

Q. Well, did Morgan interests come in after you were in? A. I am not sure about that. I think they did after I was in, I think so. I think Mr. Ryan —

Q. Well, you remained in when they came in? A. I am still in.

Q. Still a director? A. Yes, sir.

Q. Did you know that the Morgan firm was opposed to Mr. Stevens? A. I did not.

Q. Did you ever hear of a letter, written by Mr. Morgan to Mr. Shonts regarding the Stevens' proposition? A. Only since this investigation started.

Mr. Moss.—Well, it came out I think, Mr. Chairman, through the testimony of Mr. Lane, at least it was referred to at that time — the question of Mr. Morgan writing a letter to Mr. Shonts.

Senator Thompson.— The question of whether Mr. Morgan wrote a letter to Mr. Shonts has not been cleared up. The record shows that he communicated with Mr. Shonts, but it does not show that he communicated in writing, as I understand it.

Mr. Moss.— Well, there was a communication about this Stevens' proposition.

Senator Thompson.— Yes, there is something on the record in reference to statements of Mr. Dawson, that Mr. Young talked about.

Q. (By Mr. Moss.) Well, did you learn of an opposition that

Mr. Morgan or Mr. Davison or that concern had against the Stevens' proposition? A. No, sir.

Q. Since having heard of it have you inquired into that matter? You haven't learned whether, if there was such an opposition, it was based upon the personality of Mr. Stevens or upon the percentage? A. I don't know the first thing about it Mr. Moss.

Q. Didn't you talk with Mr. Davison before you saw Mr. Shonts? A. No, Mr. Shonts — when I went to talk to him about this work he spoke of Mr. Davison and some others that I had done work for to get their testimony, their recommendation. I went down to Mr. Davison and asked him if he would say a good word to Mr. Shonts for me and he declined to have anything to do with it and the reasons given were that the fiscal agents won't interfere in any way or shape or form with the contracts, and I have never mentioned it from that day to this.

Q. That was in response to your request for a letter or some positive statement? A. A recommendation, yes.

Q. A recommendation, but didn't Mr. Davison know that you were going to see Mr. Shonts before you went to Mr. Shonts? A. He did not.

Q. Do you know whether or not Mr. Davison spoke with Mr. Shonts after you saw Mr. Davison? A. I do not.

Q. Did he ever tell you whether he had or had not spoken to Mr. Shonts? A. I have never spoken to Mr. Davison from that day to this, unexcepted.

Q. You have met him many times since? A. Yes.

Q. And the subject has never been mentioned? A. Not at all. He turned me down and that was enough.

Q. Didn't he ever congratulate you upon having secured the contract? A. No, sir.

Q. Expressed no interest in the contract? A. None whatever.

Q. Never asked you what conversations you had with Shonts, or how you did? A. Not a word.

Q Was the subject avoided? A. Not at all.

Q. You don't know what private conference Mr. Davison and Mr. Shonts had? A. I don't know, of course, I don't know.

Q. He hasn't said he didn't have any conference? A. He hasn't spoken either way.

Q. Neither has Mr. Shonts? A. No, sir.

Q. You didn't tell Mr. Shonts that you had been to Mr. Davison, you didn't even tell Mr. Shonts that Mr. Davison refused to recommend you, did you? A. I didn't tell him that.

Q. Why didn't you? A. Well, I don't know.

Q. Well, wasn't it a subject that was not to be talked about any more? A. Oh, no, I don't know why.

Q. Well, wouldn't it have been natural for you to have had some conference with your good friend Davison about your getting his recommendation? Wouldn't it be natural? A. In a sense, yes, but if I had stopped and thought a mement I wouldn't have asked Davison to recommend me. I didn't think about the relationship of the Fiscal Agency.

Q. I understand that, and there was perhaps a technical difficulty in the way, but it seems to me it would have been very natural for you to say, "Mr. Davison, you should excuse me, for having overlooked the fact that you were a Fiscal Agent, but you see I didn't need to have you do it because I got it anyway." A. Well, I didn't know.

Q. Did you lunch with him after that? A. I lunched with him often, yes.

Q. And opened a bottle? A. We don't open bottles.

Q. Well, leaving off the genialities, the subject never was broached? A. Never mentioned it since, sir.

Q. Well, when you first discussed this thing with Mr. Shonts was the percentage stated? A. No, he told me he was going to take bids.

Q. But did he say that he was going to take bids on the percentage basis? A. Well, I don't recollect whether he did on the first visit — whether it was discussed then.

Q. Did you intend to make a bid for a certain rate without regard to percentage or did you intend to do it on the percentage plan from the beginning? A. Absolutely on the percentage plan. It wasn't a job that could be done any other way.

Q. Well, did you ever know of the Interborough letting out a percentage contract before? A. I never did any work for them.

Q. Did you know that in the natural order of things. the contracts that you might make with the Interborough Company would be submitted to the Public Service Commission? A. I didn't

think so because I understood at that time in some way, that it was a private contract, private money, and I didn't connect the Public Service Commission with it.

Q. Well now, in what way did you understand that? A. I think Mr. Cravath informed me.

Q. Had you paid him a fee before he informed you that? A. Well, I never stopped paying him fees.

Mr. Moss.— That is what I thought. I think, Mr. Chairman, we will have to introduce a statement of Mr. Cravath, to examine his accounts.

Senator Thompson.— I think from what we have seen of his accounts we can assume that there are enough.

Mr. Moss.— Yes, sir, what we have been able to see on the Interborough books. Well, we will pass on from that.

Mr. Gillespie.— Now, let me say this about the commission, there is a lot of work done on commission basis.

Mr. Talley.— I represented Father Farrell and wanted to ask whether we desired his presence this afternoon. It is over till Monday, I just told him.

Mr. Gillespie.— I was going to say, Mr. Moss, I have done a good many million dollars' worth of work on a percentage basis. To our concern it isn't anything remarkable.

Mr. Moss.— Not in general business, but in business which has a city relation, in business which ordinarily is subject to the oversight of the Public Service Commission; I think you will find it is not common.

Mr. Gillespie.— Well, I suppose that is true. This wasn't an ordinary thing, this was extraordinary.

Q. (By Mr. Moss) Undoubtedly, in many ways, but I don't want you to forget what I was asking you; how was the suggestion made to you? How did it come about at the beginning, as you have said a minute ago, that this was to be a percentage contract? A. I don't recall how it came about. I haven't any idea that anyone talked to me about it at all.

Q. And that was not to be subject to the Public Service Commission? A. The only recollection I have is that Mr. Cravath said that this work was to be done by the Interborough's own money, and I think, as I recollect it, it led me to believe that the Public Service Commission had nothing to do with it.

Q. Well, you got an idea from Mr. Cravath that the Public Service Commission did not have anything to do with it. A. I couldn't say that I got the idea from Mr. Cravath that this money was to be provided for by the Interborough Company — the Manhattan Elevated Railway Company.

Q. Well, if the Public Service Commission had to do with Mr. Stevens' proposition, how did you suppose it could pass over your proposition? A. Well, I really don't recall.

Q. Now, in the Public Service Commission they knocked Mr. Stevens' proposition around considerably, battered some holes in it. Now, if Mr. Stevens' proposition had to go before the Board of Estimate and be subjected to Mr. McAneny's hob-nailed boots, how did Mr. Cravath explain to you that your proposition wouldn't have to go through the same course of treatment? A. I don't recollect that he explained it at all.

Q. You took it just as he said it to you. Well, didn't you ask yourself some question, "How can this be?" A. No.

Q. You thought he wouldn't tell you if he didn't know it would be so, wasn't that so? A. Well, I don't know that he went into detail about it. I am not sure of it.

Q. Mr. Cravath calls my attention to the fact that the Stevens' proposition covered extensions as well as third tracking. A. It covered the power house and all, as I remember. If it were twenty-two or twenty-seven millions it was much larger, of course.

Q. But do you mean to say, and I will ask you, Mr. Cravath — Do you mean to say that that difference between the Stevens' proposition and this proposition is what took it out of the Public Service Commission? A. (By Mr. Cravath) I can't tell you. I don't know.

Q. Mr. Gillespie, don't you understand that it is a private company or a public company or an individual or whoever it may be, that undertakes to alter or build railroad construction in the streets

of the City of New York, upon which passengers are to be transported, that that fact in itself, ordinarily puts the procedure under the jurisdiction of the Public Service Commission? A. I understand it now, because we made out our reports.

Q. Well, even though the Stevens' proposition had railroad extensions in it, how do you figure it out that your proposition could avoid Mr. McAneny and his cohorts? A. Well, I don't remember that I paid any attention to it.

Q. Well, you paid Mr. Cravath to get you out of just such holes, didn't you? A. I wasn't in the hole.

Q. Well, to keep you from getting into it? A. Why, I don't know what I pay Mr. Cravath for; I've paid him for twenty-five or thirty years and I am glad to pay him for twenty-five or thirty more.

Q. Exactly, I don't blame you because the men who swim on the top can get on top, of all the obstacles have a right to be grateful to their lawyers. They ought not always. I am glad to find a man who will do it publicly. A. Well, don't you know that the trouble is that the contractor, the fellow, never goes to his lawyer as a rule until after he has got into trouble.

Q. You are like the Chinaman who employs a doctor to keep him from getting sick and when he gets sick he discharges his doctor. A. That is a new one.

Senator Thompson.— The only chance for some of the lawyers is for Mr. Cravath to fall down. Excuse me for interrupting.

Q. (By Mr. Moss) Did you ever do any work for the Metropolitan Street Railway? A. No, sir.

Q. Now, when was your percentage of fifteen first mentioned? A. In a bid?

Q. In your bid? A. On December 16, 1913.

Q. Wasn't that figure discussed or talked of with anybody before you put it in your bid? A. No, sir, except among our salesmen, our own people.

Q. Didn't Mr. Shonts know you were going to bid fifteen years? A. He did not.

Q. Did the other contractors know you were going to bid fifteen years? A. They did not.

Q. Did you know what any of the other contractors were going to bid? A. I did not.

Q. For the sake of the record, it has gone out of my mind, what were the bids — the two or three bids above yours of fifteen per cent.? A. The next bid was Terry & Tench, I think it was fifteen and a half or sixteen, something about like that, I don't remember exactly.

Q. But it was all on the percentage plan and that percentage was a little higher than your — each of them? A. There wasn't any other way to bid but the percentage plan on the specifications.

Q. I understand, well, now, did anybody in the Interborough Company, either before or after you made the bid ask you what kind of a plant you had? A. Afterwards, oh, yes.

Q. Before the bid was awarded? A. Yes, oh, yes.

Q. Who asked you what kind of a plant you had before the bid was made? A. Mr. Pegram wrote a letter on that subject.

Q. (By Senator Lawson) Who is Pegram? A. Chief engineer.

Q. (By Mr. Feinberg) Wasn't there some difference between the Stevens' contract and yours? A. I don't know what Stevens did. I never saw Stevens, didn't know there was a contract with Stevens.

Q. Well, supposing? A. Only in this testimony, sir, that is all. I can tell you that I believe he was not to furnish plans and that it was a larger contract. It was to cover power houses and machinery.

Q. What did the total amount of your contract come to, do you remember? A. About ten millions.

Q. (By Senator Lawson) Did Pegram write you this letter about the claim between the time you submitted your bid and the time you received the contract? A. Yes.

Q. Not before he sent you a bid? A. No, after he sent me a bid.

Q. And before they accepted it, by that letter of Mr. Pegram?

A. That is a common thing to do and is done by all engineers and there are many specifications, sir, that put in a stipulation that the contractor must state not only his experience, but his facilities to do the work. That was not a request for bids and I looked upon it from Mr. Pegram's standpoint, that he wanted to know the things that might have been perhaps in the original request.

Q. (By Mr. Moss.) Well now, are you clear that you were asked had you had a plant before you made the bid? A. No.

Q. Well, didn't the Engineer find out that you had a plant? A. That we had a plant?

Q. Yes. A. Well, I think I wrote him that we had a large plant, and as soon as my bid went in I talked to Mr. Shonts and he said we were the lowest bidder and I suggested then that I would like Terry & Tench to be taken into the work and, as I recollect that letter to Mr. Pegram, I spoke of the plant and said that if we were awarded the contract, with the permission of the Interborough, we would associate those people with us, and others.

Q. Was that said before the contract was made, are you clear about that? A. I am quite clear about that, yes. The contract wasn't made until around in February.

Q. Well, how do you know that these men who had bid higher than you would be willing to be in with you on your basis? A. Because I asked them. After their bids were in and I knew what their prices were I went to them and told them that I would like to make an arrangement with them.

Q. Did you see them before you saw Shonts? A. Oh, no.

Q. Did you see them because Shonts advised you to do that? A. He didn't advise me to see them, but he said he thought naturally I would go to see them.

Q. Did Mr. Shonts tell you to go to them? A. No.

Q. Did he tell you he would like to have you deal with them? A. Yes.

Q. Did you tell Snare & Triest and Terry & Tench that you would divide with them, evenly? A. No, I did not.

Q. What did you tell them? A. I told Terry & Tench and Snare and Triest that we would join with them in this work.

Q. But on what financial basis? A. Well, I was to retain five per

cent. for the administration of the work. Mr. Shonts charged us with the executive part of that work. He says, "I am going to look to you for carrying this work through, and I would like you to have these people because they are experienced, they have an organization and they have a plant and we want them on the work."

Q. Well, did Terry & Tench and Snare & Triest enter into this contract with you on a division of ten per cent.? A. Yes.

Q. You retained five per cent. and then you divided ten per cent. with them, didn't you? A. That is right, with Terry & Tench.

Q. How much proportion did Terry & Tench undertake to do? A. Well, Terry & Tench and the T. A. Gillespie Company were joined together in a partnership arrangement to do about sixty or seventy per cent. of the work; Snare & Triest about twenty per cent. of the work and then there was the foundations, that the Gillespie Company itself—but there is one thing now that I would like to clear up, if you please, Mr. Moss.

Q. All right, go ahead. A. There has been a wrong impression entirely about the division of Terry & Tench doing seventy per cent. of this work. This was a work that required a big organization, and it required a great deal of management. One of the conditions made before the work was given to me, was that I take these people in, but we must be the executives and we must devote our whole time to it. Now, the Gillespie Company proper devoted all its time to this work for about fifteen or sixteen months, certainly not until the back of this work was broken. We devoted all our time to it and I reserved five for that management, and out of that we spent that one hundred fifty or two hundred thousand dollars of expenses not chargeable, now understand me, not chargeable to the Interborough work at all.

Q. But was that out of the five per cent. you spent one hundred fifty thousand, not chargeable?—not chargeable to Interborough? A. In other words, that five per cent. was to provide for our management, that is, the expenses of our management, which were very heavy, covering nearly two years.

Q. Why wasn't it chargeable to Interborough work? A. For

the reason, that we agreed to superintend that work and we were to take it out of that and that is why I reserved—

Q. Why wasn't it chargeable to Interborough work? A. Because the overhead expense of the organization were not chargeable to Interborough on work.

Q. Well, you were financing your office organization of course, out of this contract then? You were carrying your office overhead charges out of this contract then? A. Out of the five per cent. then?

Q. To the extent of one hundred fifty or two hundred thousand dollars? A. Why shouldn't I? I am only asking?

Q. Well, I am only asking you, and you couldn't charge it against the Interborough on work? A. I couldn't and I didn't.

Q. Well, then as a matter of bookkeeping you individually were debtor to this contract one hundred fifty to two hundred thousand dollars, because you got that much out of it for your office expenses, is that so? A. No.

Q. You couldn't charge it gainst the Interborough contract? A. If I have a certain office expense and a big organization and part of that five per cent. went to pay that expense—I am trying to convey to you that all of this five per cent. and all of this partnership arrangement didn't divert to us at all, that was clear profit. There was a great deal of expense connected with it which was not chargeable to the Interborough work.

Q. (By Senator Thompson.) Do you mean that you spent one hundred fifty thousand dollars in excess of the five per cent. during those years? A. No, I mean it was part of it.

Mr. Moss.— He means that he took part of the five per cent. and paid his office expenses with it to the extent of one hundred fifty to two hundred thousand dollars and the payments were of such a character that they could not be charged against this Interborough contract, that is his statement.

Mr. Gillespie.— I didn't charge the salaries of the officers and of the expenses outside.

Senator Lawson.— That is not clear to me.

A. (By Mr. Gillespie.) You know, if you will take the ma-

terial in a contracting business, it is well known that if you keep the men in the field supplied with material and the work is going along very rapidly; that is, if the men in the field have to go and hunt up the material themselves to get it and have to pay their own payrolls, and have to pay their own bills, why, a lot of their time is devoted to that. Now, the Gillespie Company relieved both Terry & Tench in doing that. That is what I mean. They furnished the money for the payrolls and paid all the bills, and they had seven different mills fabricating this steel, and the mills in the South furnishing the lumber, the sand barges all round. There was as much as a thousand tons a day put on the streets of New York and it had to be taken piece by piece, and placed properly. Then, another thing, I always consented that after I got men on that work, that the first responsibility was with us with respect to danger of the Public and taking care of those tracks.

Q. And for that administrative work you would receive five per cent.? A. Yes, sir.

Q. And you did receive it? A. Yes, plus our portion of the aprtnership arrangement with Terry & Tench that we furnished the money for. We financed it.

Q. Then that one hundred fifty thousand dollars came from your associated contractors? A. No, no, it didn't.

Q. Well, where did it come from? A. Out of the five per cent.

Q. Well, wasn't that chargeable up to the Interborough? It was paying fifteen per cent., wasn't it? A. Oh. yes.

Q. Well, what I couldn't understand was you said there was one hundred fifty thousand to two hundred thousand that wasn't chargeable to the Interborough. A. I do say it wasn't charged to the Interborough.

Mr. Moss.— Because it was for office expenses, overhead expenses and salaries — the point I am trying to make — his organization was carried out of that five per cent.

Senator Lawson.— Yes, exactly, that is what he says was carried out, but he says there was an additional sum that wasn't chargeable.

Mr. Moss.— He says that that one hundred fifty thousand was not chargeable.

Q. (By Senator Lawson.) That came out of the five per cent., didn't it? That five per cent. was charged on the Interborough? A. Certainly.

Q. Then it was charged whether it was chargeable or not, that is what I wanted to get? A. Now, we are getting at the same thing only in a different way. I have been accused of trying to make it appear that Terry & Tench took seventy per cent. of this work. I don't want to detract from the way they did the work.

Senator Thompson.— Well, they said they did seventy per cent. of the work; they said they did eighty per cent. of the work. A. (By Mr. Gillespie.) They did jointly with us.

Senator Thompson.— But they said they did all the work, took all the responsibility, that is according to the testimony of Mr. Tench. He said he took all the responsibility and carried on the work without any supervision or any help or assistance from you except that you paid the pay roll. That is what he testified to and nobody else makes that statement except him.

Mr. Gillespie.— Well, Mr. Thompson, I don't know what he said.

Senator Thompson.— Well, that is what the record is.

Mr. Gillespie.— Well, the record is correct because he said so.

Senator Thompson.— Well then, you must admit it. He said he got half of the ten per cent. after taking out the cost — that you first took out the cost for what they did and that the balance was divided equally between your Company and his and that his Company did all the work and took all the responsibility; that the only thing you did was to dig some post holes or something for the posts on the street.

Mr. Gillespie.— Well, that did spoil the record if you got it down that way, but that isn't right.

Mr. Moss.— You will have to fight that out with him.

Senator Thompson.— He put it in the record. A. (By Mr. Gillespie.) He couldn't have meant it because I read his testimony of last September, I think it was.

Senator Thompson.— That is when he was here. A. And I think if you read that carefully you will see that he meant Terry & Tench and The T. A. Gillespie Company did that work conjointly and that they took the responsibility. If he said he did it, he said "We did it" and his saying "We did it," meant simply Terry & Tench.

Senator Lawson.— Well, the record is open to you to clear that up before you get through.

Q. (By Mr. Moss.) What proportion of the work did you do and what was the money involved? A. Well, I was a partner in the Terry & Tench and we did seven per cent.

Q. But how much did you contribute in the work, a million dollars worth — one million or two millions, in the foundation? A. The Gillespie Company turned in and helped Terry & Tench when they got behind.

Q. What was the total amount of the contract that was turned out? A. Ten million three hundred thousand dollars.

Q. Is that all, including the percentage, ten million three hunedrd some thousand dollars, including the percentage? Does that include the additional contract, the extensions dated February 27, 1915?

Senator Thompson.— They call it connections and the others they call it extensions. A. Well, there was four or five hundred thousand to that, that is, in addition.

Q. That you did at twelve and a half per cent.? A. I am talking now about the fifteen per cent. That is ten million three hundred thousand dollars.

Q. (By Mr. Moss.) Why didn't you charge fifteen on that? A. Well, we were going to have the plant and organization and twelve and a half per cent. was taken.

Q. Did they ask you to take less than fifteen? A. I don't remember.

Q. Did you offer to take twelve and a half without being asked to do it? A. Not very likely; I don't remember the details of it but I am quite sure that it was a mutual arrangement of twelve and a half per cent.

Senator Lawson.— Did you all bid on that as you did on the previous work? A. No, because that was in an arrangement under the first contract.

Q. (By Senator Lawson.) Did you take Terry & Tench and Snare & Triest into that? A. We took Terry & Tench and gave them four and a half per cent.

Q. How did you finance Terry & Tench, how much? For all that work, how much? A. Well, I had one million dollars in money in there; at one time I had a million and a half dollars in there.

Q. How did you do it? A. Through the Liberty National Bank.

Q. How did you do it? A. Well, I had a little —

Q. Now, wait a minute, Mr. Gillespie, did you pay Terry & Tench money? Did you give them money? A. Why, of course, I did.

Q. Did you give them money in checks? A. In checks, yes.

Q. How did you give them the money? A. The Gillespie Company's executives paid all the bills, paid all the pay rolls, and then when we got the money paid on account of the percentage they got their share of it.

Q. That is paid in checks? A. Yes.

Q. How much did you have to carry them for? A. Well, I could not segregate that particular portion off hand, but I say we had sometimes one million dollars in money and the earned percentage amounted to a half a million dollars and we had a million and a half at stake once.

Q. I am noting what you had at stake. Didn't they have any money of their own? A. Well, judging from what Mr. Tench said, they didn't have a great deal.

Q. Well, they had bid for the whole of this work. A. I know they had.

Q. Did they bid with an understanding that you would finance them if they got the job? A. No, they did not.

Q. Did your contract call for a visit to the office of the Interborough at regular periods and a part payment of so much per cent. in cash? A. The contract called for being paid as a section was completed.

Q. Well, that is in cash — by money — the actual money? A. No, there wasn't a cent of real money. I have heard that talked about — all checks every dollar.

Senator Thompson.— Did your contract, the contract that you have, say that cash is a check? A. It isn't the actual currency. I never heard of such a thing. How in the thunder would I get three hundred thousand dollars and carry it around?

Q. (By Senator Lawson.) But your contract said in cash and I want to ask you right there. A. Excuse me, well, I understand a check is cash. It isn't a note.

Q. (By Mr. Moss.) All the money came to you under the contract with the Interborough Company? A. Of course.

Q. (By Senator Lawson.) In your experience as a contractor do you know of any other contract that has ever been made between a Public Utility Corporation and a contractor that called for a certain percentage to be paid in cash, not cash? I am asking for an opinion now, in the light of your experience? A. I don't distinguish the difference between cash and check.

Q. All checks are not good you know? A. Oh, well, that is quite so, but I generally take care to see that the check is good.

Mr. Quackenbush.— All Interborough checks are good.

Q. (By Senator Lawson.) But if the particular words were in that contract. A. In thousands of transactions it is cash.

Q. Then the word "Cash" in that particular contract is not an unusual thing? A. Not at all. It doesn't mean currency, it means check on a certain day and that is what it means.

Q. It means something different from a contract's vernacular than it does when we talk about cash and checks in an ordinary sense? A. I wouldn't understand it so.

Senator Thompson.— What you realize is that this contract provides terms, that the money shall be paid to you personally in cash. A. Personally.

Senator Lawson.— That is what it says.

Senator Thompson.— Get this contract and let him understand

his own contract. Did you ever read it? A. Oh, yes, I never got a thousand in cash.

Senator Lawson.— I will read this, Mr. Gillespie, paragraph eight: "On or about the fifteenth day of each month, 90 per centum of the amount appearing due by such estimates, together with the contractor's percentage thereof, shall be paid to the contractor in cash, at the office of the Company, upon delivery of receipts satisfactory to the Company." A. Well, that means a check, of course, and I will produce you all the checks, if you want them, for the whole transaction, everything from beginning to end.

Q. (By Senator Lawson) You can understand the reason now for my questions as to whether the word "Cash" appeared usually in all contracts. A. It doesn't mean what you thought it meant.

Senator Thompson.— What does it mean? A. It means a check and it doesn't mean a note.

Senator Thompson.— What did he think it meant? A. He thought they meant hand me over five or six thousand dollars in cash.

Senator Lawson.— If I said to Senator Thompson, "I have just handed Mr. Gillespie one thousand dollars in cash," and I handed you a check, what would you consider was the accuracy of my statement? A. I would say your check was cash, if it was good.

Q. (By Senator Lawson) What would you say, would you say that was cash? A. Certainly, there are only two distinctions in business, cash and note.

Q. (By Mr. Moss) Well, you got the money, all of it? A. All of it.

Q. You paid the payrolls? A. Yes, sir.

Q. When money was needed, where did you get it, through what bank? A. Well, I got it at the Guaranty Trust Company.

Q. Well, where else? A. Perhaps a little of it elsewhere.

Q. Well, the Guaranty Trust Company is a Morgan Bank, isn't it? A. Not a bit of it.

Q. Isn't it affiliated with the Morgan Bank, the Liberty Bank

where you got money, wasn't it the bank where you and Davison are both directors? A. And that is not a Morgan Bank.

Q. Well, it is a Davison-Gillespie Bank? A. I am a little fellow.

Q. It is a Davison-Gillespie institution and when a man slings around a million dollars, like you do, I am not going to put him in a little class. I am going to put you in a high class. A. I am a high class contractor, but not banker.

Q. You carry their note for fifty thousand dollars; Terry & Tench, one hundred thousand dollars, and you carry Snare & Triest's note there for twenty thousand dollars, don't you? A. More than that, the paper shows what it is.

Q. (By Senator Lawson) You don't remember, you did it so frequently, you don't remember? A. Oh, well now, Terry & Tench, I wouldn't have mentioned that at all.

Q. Who paid the interest charges, were they charged up to Snare & Triest and Terry & Tench? A. No, we paid them.

Q. Weren't they charged against them? A. Oh, you mean on their own loans?

Q. Certainly. A. Certainly.

Q. (By Mr. Moss) Was the Terry & Tench end of the contract assigned to the Liberty National Bank to protect you? A. Well, there was some paper drawn up by the counsel of the Liberty Bank. I don't remember what it is.

Q. His assignment is right here, I will put it in evidence later.

Mr. Quackenbush.— Weren't you in error in assuming that that contract provided for the payment of moneys to Mr. Gillespie? I drew that contract and my recollection is that I used the word "Contracts" all through. There wasn't any money paid to him individually.

Senator Thompson.— I will give it to you. I am looking for that.

Q. (By Mr. Moss) You got your money from the Interborough, didn't you and it was all by check? A. Yes, sir.

Q. You never got any currency from the Interborough? A. No.

Q. So it would all appear in the checking account some way? A. Yes, sir.

Q. During this period that we are speaking of, did you ever have an office in Pittsburg? A. Yes, sir.

Q. Under what name? A. The same name.

Q. Under your regular name, the same name that you took this contract under and while this contract was in existence, did you send money to the Pittsburg office? A. Yes, and for the last nineteen years we have sent money there and they send it back to us.

Q. There has been an interchange of financial transactions between those two offices of your concern, New York and Pittsburg, during the time that this contract was in existence and while this work was going on? A. Yes.

Q. (By Senator Lawson) Are you a Pennsylvania or New York corporation? A. New York.

Q. (By Mr. Moss) Were any of the Interborough checks deposited outside of the City of New York? A. No, sir.

Q. All in the regular banking account? A. I don't think there has been a dollar. I don't think we sent money out of this particular money at all.

Q. But you sent general money? A. General money, yes, sir.

Q. But where did you deposit — in what bank did you deposit your Interborough checks? A. In the Guaranty Trust Company, principally.

Q. Did you send any checks of the Guaranty Trust Company to Pittsburg? A. We may have during this period that we mentioned. We may have, I don't know just at the moment.

Q. You said you deposited principally in the Guaranty Trust Company in this city; that is, the New York company? A. Yes, sir.

Q. Did you deposit the Interborough checks in any other bank? A. We may have, I don't recall.

Q. If you have, what bank would it be? A. Well, it might be the Liberty.

Q. Did you send any checks drawn on the Liberty back to Pittsburg? A. Oh, yes, I am quite sure we did.

Q. During this period of the contract? A. Yes.

Senator Thompson.— I want to read a portion of this contract. It provides in number one of the contract that all three, Terry & Tench, Snare & Triest and the Gillespie Company, shall be known as the contractor; then eight says that ninety per centum shall be paid to the contractor in cash; and then, number fifty says that all work done by the contractor shall be done under the supervision of the T. A. Gillespie Company.

Mr. Quackenbush.— I think we added "Executive" to the checks.

(Adjournment until 11 A. M., May 12, 1916.)

MAY 12, 1916

Convened at 12 o'clock noon, Senator Thompson in the chair.

PHILIP G. GOSSLER, being duly sworn, testified as follows:

Examination by Mr. Frank B. Moss:

Q. You are connected with the Longacre Electric Light and Power Company? A. Yes, sir, I am president.

Q. Your personal knowledge of the affairs of the company don't go back to 1911, do they? A. They do not.

Q. I want to ask if your company has continued in active life ever since you have been in it? A. It has.

Q. Has your company continued negotiations with the Interborough Railroad Company since you have been in it? A. We have taken up negotiations with the Interborough Company since I have been associated with it.

Q. You know there was an occasion when there was a negotiation that was discontinued? A. I only know that from hearsay — that was prior to my connection with the company.

Q. But since your time negotiations have at least been resumed? A. Yes.

Q. And have you been personally in conference with gentlemen representing the Interborough Company? A. I have had a number of conferences with Mr. Hedley on that matter.

Q. How recently? A. Oh, off and on during the past year and a half.

Q. How recently? A. Well, nothing very recently, I should say nothing within the past six months.

Q. But it is a matter that is under consideration between both companies, as I understand you? A. It is.

Q. Have you taken into consideration the opposition of the Consolidated Telegraph and Electric Company? A. You mean actively?

Q. Yes. A. We have the right to occupy the ducts of the Consolidated Telegraph and Electric Subway Company, and we do now occupy a certain number of those ducts.

Q. That right you get because you went to court and fought it out? A. Yes, sir.

Q. But are the ducts which you occupy sufficient for all of the purposes you have in contemplation? A. They are sufficient for our present purposes.

Q. Does the decision which you obtained entitle you to more service if you want it? A. My understanding is that it was.

Q. Are the rates in any way oppressive? A. The rates I think are the same as they were probably twenty years ago. I think the rates are a thousand dollars per mile for distributing ducts and nine hundred dollars a mile for trunk.

Q. Is this the regular charge? A. That is the regular charge.

Q. Do you consider that a reasonable or an excessive charge? A. Well, I think I will answer that by saying it is the same rate that was in use twenty years ago.

Q. I understand that, but making that allowance. A. I am not familiar with the costs of operation of the subway company.

Q. That is a subject that the Committee might well go into but if you don't know we won't press you on that. Where are the ducts that you have now? A. The ducts that we have under rents from the Consolidated Electric Telegraph and Subway Company are practically from river to river on Fifty-ninth street from Second or First avenue to Eleventh avenue on Forty-second street, adjoining subway connections on Second avenue. They extend down part way Seventh avenue, part of the way up Sixth avenue from Forty-second street and there are smaller connections. I don't know all of the details of those connections, but those are the main ducts occupied.

Q. When your application for authority to issue securities was denied originally by the Public Service Commission, do you know who was the chairman of the Commission? A. I can't say positively. I think it was Mr. Willcox. I am not sure.

Senator Thompson.— Was that thousand dollars an annual rental?

A. Yes.

Q. (By Mr. Moss).— For each wire?

A. For each duct. Two to four wires are used in one duct.

Senator Thompson.— A thousand dollars covers whatever number of wires you put in?

A. Yes.

Senator Thompson.— You have the purposes of that duct for whatever electrical uses you want to use it? Probably in a day you would only put one heavy cable in?

Q. (By Mr. Moss).— Then the court made a decision which was tantamount to organize the Commission to give you the authority to issue the securities and action was taken by the Commission in accordance with that decision. Do you remember whether Mr. Willcox was the chairman then?

A. I do not.

Q. Well, your knowledge of the affairs of the company would ——

Senator Thompson.— You can tell us what date it was?

A. I am not familiar with the personnel of the Commission at that date. The final order for the issuance of those securities I think was in February, 1913.

Q. (By Mr. Moss).— Are you aware whether or not Mr. Willcox has appeared for the Edison Company as attorney since he left the Public Service Commission?

A. My recollection on that point is very hazy. I don't know.

Q. Or the Consolidated Gas Company? A. I really don't know positively.

Q. While this matter is mentioned, I will say to the chairman that the reported decision in the eighty-cent gas case, as you will find it in the law books, is entitled William R. Willcox and others against the Consolidated Gas Company.

Senator Thompson.— It will show that Willcox was chairman because in February, 1913, is when his office expired.

Q. (By Mr. Moss).— I offer in evidence copy of the contract which was proposed by Mr. Plummer between the Hudson,

Manhattan Railroad Company and the Longacre Electric Light and Power Company, dated February 1, 1915.

Marked in evidence Exhibit No. 1, May 12, 1916.

Mr. Gossler has promised to send a copy of the findings in the foreclosure, wherein as has been stated by Mr. Plummer, Judge Greenbaum found that the foreclosure suit was brought in the interests of the Edison Company.

Senator Thompson.— Were you present at the negotiations of the Interborough people with relation to contract for taking their excess power?

A. Recently? I referred to the fact that within the last year and a half I had participated in those conferences with Mr. Headley — not prior to that time.

Q. The conference that was referred to the other day, was that had prior to a year and a half?

Mr. Moss.— Oh, yes, I have talked that over with Mr. Gossler before I put him on the stand.

Senator Thompson.— Did the question arise at all with relation to the power of the railroad to sell this excess power to you?

A. Yes, sir.

Q. Have you people been impressed at all with the proposition that you haven't any right to purchase this power as long as it is taken at the premises of the railroad? A. We are advised to the contrary. We are advised that we have the right to take that power.

Q. As long as the Interborough crosses no street and requires no franchise? A. Our proposition with the Interborough Company was to take the power from their switchboard.

Q. And that did not require them to cross any street or require them to secure any public franchises? A. No, sir.

Q. And under those circumstances you are advised that you have the right to purchase it and they have the right to sell it? A. We have the right to purchase it.

Q. The distribution proposition affects you of course because you have to use the streets and use a franchise? A. Yes, sir.

Mr. Quackenbush.— May I make the suggestion? I want you to get the idea that I tried to express the other day. I didn't take part in any of these negotiations and I don't know what the conversation was, but I would like to see if the question of taking the off peake power was under consideration or whether it was a question of taking power on a twenty-four hour service. It makes quite a difference with our rights in my judgment. If we maintain our power plants to take care of our peake, we must keep that peake. Our surplus is the off peake production, or ability to produce, but if these gentlemen are talking about a definite quantity of current and we must deliver that, we have to have that above our peake, and then comes the question of whether we have any right to manufacture power for general sale, which shows that we are manufacturing power above our necessities.

Senator Thompson.— Of course, up to the peake would be a question of manufacturing power within your necessities, and above that would be the question of manufacturing power within your equipment.

Mr. Quackenbush.— And then whether we were engaged as an electrical corporation instead of a railroad corporation ——

Senator Thompson.— You install the equipment that has efficiency beyond your necessities because you have to. Of course, you have the machinery and stock? The question is whether or not you should use that machinery that is installed and take advantage of the fact that you already have the capital in it beyond your peake.

Mr. Quackenbush.— Our peake is several hours duration, morning and night, and we are called upon to use it. What are we going to do with what they are talking about during that same time? We can't deliver to them unless we put in additional units. You want to notice that fact.

Senator Thompson.— You quote the Public Service Commission law, you did the other day.

Mr. Quackenbush.— And our power is a railroad corporation.

Senator Thompson.— Of course, the entire jurisdiction and rights of the Public Service Corporation depend on the use of a

franchise. Their supervision and regulation is limited to such corporations as are using a franchise for the purpose. For instance, I assume that we have a right to make electricity and distribute it on our own premises without going near the Public Service Commission.

Mr. Quackenbush.— That was agitated in 1910, and the conclusion reached at that time was in accordance with what you say.

Senator Thompson.— I don't care how much power you make; you can be a gas company and make tar, anything, a by-product. It is a question in my mind as to whether the Public Service Commission has anything to say about it if you don't take it off the premises and use a public franchise for the purpose.

Mr. Quackenbush.— I want to keep your mind open that we need additional legislation.

Senator Thompson.— I may not have anything to say about it, but I would like you to tell us if it is possible that we have any.

Mr. Gossler.— I would like to say that all of our negotiations with the Interborough Company have been on the basis of using their surplus power or power that they did not require for their regular operations.

Mr. Moss.— Would you expect to furnish current at a lower rate than that which is now charged by the Edison Company?

A. The schedule would be lower than the Edison Company's rates.

Mr. Moss.— While the witness is on the stand, I think I can read from this railroad agreement all that is needed:

> "First, the railroad company shall furnish and deliver to the power company at the railroad company's switchboard in the substation, three-phase alternating current at approximately twenty-five cycles per second and eleven thousand volts between conductors to the amount of fifteen hundred kilowatt-hours in the maximum hour of use during the time and upon the terms and conditions hereinafter men-

tioned. Second, the railroad company shall furnish and install other switchboards, switches, circulators, connections, and measuring instruments as are necessary for the proper control of the circuits and measurement of the power delivered under the provisions hereof. The following rates and prices: (a) When the power supplied in any month is less than the maximum demand multiplied by two hundred fifty, then the rates should be one cent per kilowatt-hour. (b) When the power applied in any month is greater than the maximum demand multiplied by two hundred fifty, then the rates shall be one dollar per kilowatt of maximum demand plus one-half cent per kilowatt-hour."

I think those are the important provisions.

Senator Thompson.— Are you in operation now?

A. Yes.

Q. How do your rates now compare with the rates of the Edison Company? A. I think they are approximately the same, perhaps a little bit less.

Q. Your theory that you can make them lower is that the greater your operations, the more extensive your operations, you figure the less rate you can make. That is the theory? A. Naturally, yes.

COLONEL TIMOTHY S. WILLIAMS, witness:

Mr. Moss.— We had on the stand the other day, the Commissioner of Bridges, who made a statement of the situation of the connection between the Centre street loop on the Brooklyn bridge and gave certain reasons why in his opinion that connection was not made use of, and in that statement he said he had been in negotiations with you and had asked the rental which he said the law required that he should ask for, and that you had declined to pay any rental and that is the reason why the connection is not used.

Will you kindly state what conversations and negotiations you have had with Mr. Kracke, and in a general way give your own version of the reasons why this connection is not in use?

A. In the first place, the connection wasn't built at our request or as the result of any discussion with us, as I remember it. When the connection was completed, I should say about a year ago, not much more than that, and not very much less than that, Mr. Kracke asked us to consider the use of it and in case we did use it, the question of compensation was discussed. He pointed out then to us that he was limited by the law authorizing the city to build the connection to charging an operator I think something like four per cent on the cost of the construction. Inasmuch as his powers with regard to compensation were limited by the law, if he was correct in his statement as to the law, that matter was eliminated from discussion, except I think that possibly our counsel took it up with the corporation counsel later, but the main question was whether we could find that connection useful.

We haven't found yet that under existing conditions that the connection is a useful one in the supplementing of the Rapid Transit. The idea of the connection was to enable the elevated trains that cross the Brooklyn bridge to either terminate in the Center street loop or else to continue by loop operations through the loop over the Williamsburg bridge to points in the eastern section of Brooklyn.

That circulating system would be a very desirable one if the car traffic was about equally balanced over the Brooklyn bridge and over the Williamsburg bridge. There is a large area east of Stone avenue. Generally the area comprised in the Twenty-sixth Ward of Brooklyn, and to those people it would make very little difference whether they took a train from the Center street loop stations going over the Brooklyn bridge to get home, or a train going over the Williamsburg bridge, and that circulatory system has great advantages in the matter of operation, assuming always that the balance of traffic is equal on both sides.

For instance, if there was heavier traffic on the Center street loop over the Brooklyn bridge than over the Williamsburg bridge to reach this same destination in Brooklyn, then the loop would have its disadvantages, if all of the trains were operated that way.

Q. Couldn't some of them be held and some of them sent over? A. Yes, under the new subway contracts about the only way that the people on the Fulton street elevated line can get uptown

in Manhattan on Broadway for one fare will be to operate the Brooklyn bridge trains in the Center street loop as far as Canal street where they can then transfer to the through trains running across Manhattan bridge in running up Broadway. That would give this connection some importance.

Now, the Public Service Commission has taken the position that as soon as possible, with regard to the necessities of the traffic, the wooden cars should not be operated in the Center street subway, and both the Commission and ourselves are working to that end. A large part of the South Brooklyn traffic is already carried in street cars in the Center street loop and next fall we expect that a large part of the traffic coming over the Williamsburg bridge shall be carried in steel cars and gradually as the different construction work is completed, the steel cars will be substituted for the wooden cars operating in the loop. Now, in the case of the Brooklyn bridge, we haven't yet received any assurance from the Bridge Commissioner that we can operate our new steel cars over the Brooklyn bridge.

The Fulton street line is being third-tracked with the expectation that steel cars will be operated over those tracks, but if the Bridge Commissioner doesn't allow those steel cars to be operated over the Brooklyn bridge, why then, of course, we can't operate those cars on the Brooklyn bridge nor in the connection.

Q. Is it your idea that the Brooklyn bridge will require very much strengthening in order to admit that traffic? A. No, some weeks ago Commissioner Crackey wrote to me and asked if we had any proposition to submit with reference to the use of this connection from the Brooklyn bridge into the center street loop. I told him that if he could give us the assurance that trains of the new steel cars, comprising at least six cars to a train would be operated over the Brooklyn bridge, that we would be glad to take up with him the matter of use of that connection. To that I have had no reply. That must have been pretty nearly two months ago now, or if I had a reply it was merely an acknowledgment.

Mr. Moss.— When do you think the third-tracking at Fulton will be done?

A. About half of it is done now and in operation. I sent over to the Public Service Commission the other day

a form of contract for pretty nearly all of the remaining half, from Nostrand avenue to Cumberland street. The remaining section is between Cumberland street and the Brooklyn bridge.

Senator Lawson.— Has any question arisen in your minds or the minds of the Public Service Commission or the Bridge Commissioner as to the capacity of the Brooklyn bridge to carry four-car steel trains?

A. The Bridge Commissioner now limits us with the present equipment to six-car trains.

Q. That is on the wooden cars? A. Yes, four of our new cars will carry about as many people as six of the old cars.

Q. There is no question about the bridge sustaining steel cars? A. I don't know whether he has any question.

Mr. Moss.— I think that is an important question, because there has been so much said about the expensive repairs that will be necessary to the bridge before that traffic can be properly accommodated. I have seen statements that eight million dollars will have to be spent. If it is intended to use the Brooklyn bridge and to make it available as soon as this third-tracking is finished, there ought to be some plans under way to get the bridge ready for it, and I asked Colonel Williams, because I know that he is a man of large information, to give us his best opinion as to the necessity of any very extensive or costly repairs or alterations or improvements to the Brooklyn bridge.

Colonel Williams.— Of course, that is a question entirely of expert engineering opinion. There is this fundamental fact that ought to be considered, and that is that our new steel cars, while they are sixty-seven feet long and will seat nearly a hundred people as against fifty in the old cars, they are not any heavier, and while they are built of all steel, too, they are not any heavier per lineal foot than the present equipment, and fortunately the Brooklyn bridge is wide enough to permit their use. This is because the cars originally used on the Brooklyn bridge were wide cars, so that it wouldn't seem as if there was any more objection from an engineering point of view to operating six of those cars in a train than there is to operating six of the present type.

ght imposed on the structure for any particular section, ılar foot or yard, isn't any more, except for possibility that are in the car, because of the wider car, and that nfinitesimal, than under the present arrangement.

Thompson.— The principal weight is the people in the , isn't it?

ıo.

ıs.— Would each car contain about twice as many ıe old cars?

would be an increase in weight? A. Only as to the y recollection is that one of those cars, loaded with standing passengers weighs in the neighborhood of a nty-five or a hundred twenty-eight thousand pounds, it weighs about eighty-six or eighty-seven thousand

hompson.— What did your present cars weigh?

hat more per lineal foot, I have forgotten exactly

ompson.— Per lineal foot of car?

ımpson.— Either filled or otherwise?

ate, about the same, not any less.

- In order to negotiate the grades of the bridge ıll it require that the cars shall all use motors?

d all of our present plans are based on every car ar, all controlled by one man, and our decision to with motors was largely due to some of the grades roposed in connection with this subway work.

heavy grades in all of the bridges, aren't there? liamsburg bridge grade, the proposed Queensboro l this grade in the Center street loop of the Brook- l in the neighborhood of five per cent.

Q. And those grades are complicated with curves? A. Yes, some of them.

Q. Is it so with reference to all of the Center street loop connections? A. Yes.

Q. Did it ever occur to you that that was a fault of the original designing? A. I think I could tell you a great many things about the original design and the conception of the Center street loop, but that is past history now.

It is a dead issue. The loop is there and somebody has to operate it. It was originally proposed when the old Rapid Transit Board let a contract for the New York subway from the City Hall to the Battery and thence over to Brooklyn, and they turned down a Brooklyn corporation that had bid for that franchise, and they said, now, we will do something for Brooklyn and we will construct the Center street loop should be operated with cars equal to the then existing standard of the Brooklyn Union Elevated Railroad Company. That was the origin of the Center street loop, and afterward the idea was extended to make it a loop operation in Brooklyn, as well as in Manhattan. In substance though it was intended for operation by the Brooklyn system of elevated railroads, and without any assurance whatever that the Brooklyn system would operate into it.

In fact, my predecessor, Mr. Winter, stated positively to Mayor McClellan that so far he was concerned he would not favor such operation and for years after it was practically completed, the question of an operator remained in doubt.

Q. It was testified that this new improvement costs about eight hundred thousand dollars, and that under the conditions, it is dead capital. The Bridge Commissioner says he didn't originate it. It originated before he came into the Bridge Department.

Do I understand you correctly to say that your company was not consulted with regard to that improvement? A. As far as I know we were not consulted in the slightest question.

Q. You were the only company that could use it? A. Yes.

Q. And the usefulness of that improvement would depend naturally upon whether the B. R. T. could use it or would use it? A. I think they might have had the right to assume that in as much as we accorded our opinion in favor of an elevated loop

connection to accomplish the circulating system that I have described, that we probably would be in favor of this.

Q. Do you know whether any communications were made by your railroad or on behalf of it to the authorities that were constructing this improvement, any remonstrance or any suggestion? A. I don't remember any at all.

Q. Now comes, I think, the most important question with relation to this unpleasant situation, what has the Public Service Commission done, or what is the Public Service Commission doing to adjust this difficulty? A. I am not sure that they are doing anything. It was suggested to them, I think informally, either by the Bridge Commissioner or by yourselves, when the matter was first brought up by Commissioner Kracke, that inasmuch as any compensation that we paid for the use of that connection would be a prior charge against the earnings in which the city and the company were jointly interested and would withhold so much money from the interest on the city's bonds, there was no advantage to the city in exacting any rental. By improving the Brooklyn bridge and this connection as a Rapid Transit route under the provisions of the Rapid Transit Act, there would be no necessity for any of this special compensation. The city would gets its return in the same way that it gets its return out of all of the Rapid Transit routes contributed to the joint system. Now, I don't know that the Commission has taken any steps along that line. I don't know whether they intend to or not.

Q. If the rental question were out of the way, could you make any use of this improvement? A. Not at the present time, no.

Q. And when the time comes, which I suppose will be when your third-tracking is complete, will that rental question still be a difficulty? A. I am not sure that it will present any difficulties. It will be merely a question as to what the connections were worth.

Senator Lawson.— What is your objection at this time, in your statement that it wouldn't be an advantage to use that subway connection? Could you have some reasons for it? A. The principal reason is that the Centre street loop with the great volume of business that is coming down over the Williamsburg

bridge and now runs over the Fourth avenue subway, and very soon, probably this summer, with the new Utrecht avenue line to South Brooklyn will make it impossible to get any additional trains into the loop.

Senator Lawson.— Couldn't some of those Ridgewood-Broadway trains be operated through there, so as to relieve the congestion at both terminals? A. If the balance of travel over both bridges could be maintained, then there would be some advantage, but you must remember, Senator, that the Center street loop now is performing the function somewhat different from what it will perform after the entire subway system is completed.

Q. It really isn't a loop now? A. It is a terminal now. Eventually it is to be extended down Nassau and Broad streets to the Battery.

Q. I would just like to have your expert opinion as the executive head of the system in Brooklyn as to whether the use of the subway connection, even at this time, wouldn't relieve the congestion of these various trains from Myrtle avenue, Cypress Hills, coming in there, dropping off their people and the passengers being put abroad and then pulling out again. Wouldn't it be relieved if they dropped their passengers and went around and took their passengers, and then went on up? A. As far as Myrtle avenue is concerned, I don't think there is any chance of such a loop operation, because that has a terminus way over north of the Fulton street line. The Myrtle avenue line terminates at Metropolitan avenue.

Q. Do you recall that this loop was held out to the Brooklyn people at the time it was agitated as being the real relief that would be afforded of the crowding of the New York end of the Brooklyn bridge at that time? A. We thought it would have that effect, yes. That was before the other line was put into it. Now, you have got the Fourth avenue subway going into the loop, and you will have in a very few months, the new Utrecht avenue branch of the Fourth avenue subway, bringing probably a larger volume of business than the Fourth avenue subway now carries itself into that terminal.

Then you have all of this very rapidly growing territory up in the neighborhood of Ridgewood and beyond, and in addition to that, you have got the Lexington avenue, which runs out to East New York. All of that is more than the loop was intended to do. All of that subway business, or a large part of it was intended to go over Manhattan bridge, through the Canal street subway, and up Broadway.

The Center street loop subway was to be continued down Nassau and Broad streets to the Battery, and that left an "X" shaped arrangement by way of Fourth avenue subway, Manhattan bridge, Center street loop, Nassau, Broad and Montague street tunnel. A short loop that would have been very useful, but the effect of all of those would have been to distribute the traffic. You wouldn't have had any such material thing as you see now every night in the rush hour down in the basement of this building. No transportation man would ever have laid out a station like that in this basement.

Q. I agree with that. A. It is nothing but stairways. The platform space is limited. You take that table as illustrating the platform space and put seven wide stairways down the length of that table, you get a picture of what that arrangement is. They are talking of making expensive changes in order to simplify that arrangement which has only been in operation a couple of years, but when the loop is extended down to the Battery, and this business which now terminates in this building is distributed all along from Delancy street to the Battery, it may be that that station will be satisfactory without any great changes.

Q. I would like to comment right there that the people of New York and Brooklyn have had all those, not from you particularly, promises, and at the end of the completion of the various roads, they always find that they are up against just some such problem as they are up against today. A. Of course, we haven't all the foresight of some statesmen.

Mr. Moss.— Senator Lawson, do you think there is practically now about this town more importance for the Public Service Commission to be dealing with than this problem. You are not the Public Service Commission.

Senator Lawson.— I think that if Colonel Williams, the Bridge Commissioner, and the Public Service Commission could work out a proposition that would relieve the congestion downstairs and the congestion at the Brooklyn end of the bridge by a partial operation of that subway connection.

Colonel Williams.— There isn't any congestion at the Manhattan end of the Brooklyn bridge right now.

Q. They form those people in line there just like so many cattle. A. The situation is such that you have pretty nearly seating capacity in the rush hours on the Brooklyn bridge unless there is some delay in the traffic.

Senator Lawson.— I have never seen that.

A. At any rate, the business has been distributing.

Q. How about the removal of that head-house over Park row? A. They could remove that at any time.

Q. It would upset your traffic? A. All that is necessary is that they give us a year's notice. That wouldn't make any difference to the Bridge Commissioner. He ordered us to get off the Williamsburg bridge.

Q. We assume that the Bridge Commission wouldn't want to have the public of New York being discommoded by an order? A. If we took him literally, the public would be very much inconvenienced.

Q. Then, I will put it in another form. When do you think arrangements can be made which would be proper and practicable for the discontinuance of the situation that requires the use of that head-house? A. Well, without any inconvenience to the people, I think it would be quite a long while, but he is at perfect liberty to do it on giving us a year's notice, but you understand, Mr. Moss, the so-called head-house, that extends over Park row, is only partially to come down under this new terminal arrangement. The Brooklyn Elevated lines are still intended under that revised plan for a terminal to have a terminal up over head, not extending across the street, as it does now, and that big extension there is not for us alone. It is for all of the Manhattan Elevated, because if you want to take the Manhattan

d trains at the subway, you can mount the stairway on
.e of Center street, right next to the old register office, so
arge part of that structure is intended both as a promenade
: trains and for the Manhattan Elevated trains and when
removed under the plan, which I think Commissioner
fe prepared, why so far as the terminal for the elevated
of Brooklyn are concerned, those will merely be pushed
r away. It was always intended to have joint operation
nto those terminals and into the Center street loop under
iissioner O'Keefe's plan.

iator Lawson.— The Bridge Commission is compelled under
o charge for the use of that subway connection, as I under-
it. The interest is ninety-six dollars a day plus one per
for amortization, if that could be waived, which it can't
the present of course, but if that was waived so that you
have the use of the subway connection without any addi-
l cost, if that is an objection on the part of your company.
)u think that you could practically work out some way to
use of that subway connection, so as to partially relieve
ongestion at both of those terminals — the Williamsburg
e and the Brooklyn bridge? A. I don't very much under-
existing conditions. Whether it would relieve the Wil-
burg bridge I can't say. The Williamsburg bridge is the
e that ought to be relieved. It used to be the Brooklyn
e and now it is the Williamsburg bridge, but if you will
e illustrate. You know the situation, but Senator Thompson
not.

nator Thompson.— I am going to ask you when we suspend
ke me down into that loop. The other day the Committee,
e invitation of Senator Lawson, undertook to become part
personally escorted party by him to go through, and he
't there.

lonel Williams.— (Draws diagram).

(By Mr. Lawson).— That is under contract to be finished
)er, 1916?

That is the Myrtle avenue branch, that is still another
h going up that way, so that while it might be possible by

making that kind of loop operation a success at the present time, it has to be experimented with to see whether it was a success or not, and whether the traffic —— the Public Service Commission has taken the position that no more wooden cars should be operated in the Center street subway and we both plan jointly to gradually get rid of those that are there.

Mr. Moss.— You can't run the Fulton street cars over until you have the steel cars?

A. We can run the present equipment.

Senator Lawson.— You would not increase the number of cars just by sending them around through that subway and continuing them on up. You could make an arrangement to equalize your traffic, to do that?

A. It is a question of equalization.

Q. That could be done, couldn't it? A. That could be done if the grade would permit. Of course, our present equipment is not based on the motor equipment.

Senator Thompson.— I rather understood the other day that you and the Bridge Commissioner, who is head of your railroad, is representing the city so far, and paying your grade on the operation of the Center street loop because of the rental purpose. I understood the other day that you didn't want to pay any rent, and that the city didn't want to let you operate it unless you did.

A. You must not believe all that you see in the newspapers.

Q. That was one reason that we sent for you. I get this in my mind and I want you to straighten it out if I am wrong. That you are willing to pay rent, but not until you can run steel cars into it? A. I haven't the slightest objection whatever if it will improve the transit conditions there to paying rent for it if the city thinks that is a proper thing to do. By the city, I mean the Public Service Commission, representing the city under our contracts with them. They are jointly interested with us. There can't be any difference of opinion. Now, if the Commission should decide that it wasn't a good thing to postpone the day of their getting return by our paying the rent to the Bridge Commis-

sioner, which he could use as the revenue of his department is used, why that is another question. It is a question for them to decide. If they should decide that by making that a Rapid Transit route, the whole question of compensation would be merged into the Contract No. 4 between the city and ourselves, why that would be a very easy way out of it. There isn't any difference of opinion. There may be a difference of opinion, there isn't any difference of interest between the city and ourselves as to whatever arrangement is there.

Mr. Moss.— Then, it is up to the Public Service Commission as was suggested.

Senator Thompson.— Do you think that you would rather deal with the Public Service Corporation than to deal with the Bridge Commissioner?

A. Both are pretty hard, Senator, but I should every day in the week prefer to deal with the Public Service Commission.

Q. I think the Public Service Commission is the easiest thing in New York. A. You haven't had the experience with them that I had.

Q. I have had a lot of it for a year. A. They are pretty hard, I think.

Q. Then, let me see if I understand something more about this. If you pay rent to the Bridge Commissioner, then he takes the satisfactory part of the income of his department, and it goes to the city and the city uses it for whatever they want, general funds, specific funds. A. What part of it he doesn't use?

Q. What he doesn't use to pay his folks, the over-plus goes to the city if there isn't any. If you pay rent in another way, if you take it under Contract No. 4, then it goes in under the arrangement in the dual subway contracts. That is, you take out your rent, your interest and your amortization, your preferentials and everything, and by and by when you get all though, you get half and the city gets half? A. For instance, if it is four per cent on eight hundred thousand dollars, I don't know anything about the figures, but Mr. Moss has said that that is thirty-two thousand dollars a year. If we had to pay that thirty-two thousand dollars a year, and we came within thirty-two thousand dollars a year of

paying interest on the city's bonds, why the difference to the city would be nothing. They would lose it in one case and gain it in the other.

Q. But if you did make enough to pay the city's bonds interest, then the city would get thirty-two thousand more by paying it to Kracke than they would by dealing with the Public Service Commission? A. No, not even then, because on that assumption the time of the visible profits would come and then you would take half of each. We never would have withdrawn from the contract if it hadn't been for the hope of a visible profit. That is my great ambition, to see the visible profits come.

Senator Lawson.— Is it your idea that that subway connection should have been a part of the dual subway system without being under the jurisdiction of the Bridge Commissioner?

A. I think it ought to be, yes.

Mr. Moss.— It is within the power of the Public Service Commission to make that so. It does look like an anomalous situation.

Senator Lawson.— When these difficulties arise in matters of great interest, and the people who travel, is it the custom and usage of the Public Service Commission to ask both sides to appear informally and digest the question, debate it so that they will arrive at some conclusion, try and have the minds meet?

A. Yes, we have a good many conferences of that kind. Sometimes they are slow in coming. Sometimes, especially if there is any particular agitation about a subject, why they come more quickly than they do when there isn't.

Q. Have you ever been invited to a conference on this subject as a result of agitation by the Bridge Commissioner, or have you ever had any conference on this subject at the invitation and before the Public Service Commission? A. I am not sure that we did as to the whole subject, but one phase of the subject which came up at the same time was the question of a station on the Williamsburg bridge plaza. The people in that vicinity, as you know, some of the strongest financial manufacturing interests in Brooklyn, were very anxious that there should be a station for the elevated railroad on the Williamsburg bridge plaza, and from a transporta-

tion point of view, we recommend it very warmly, and prepared plans for it. We sent the plans to the Public Service Commission, and I think they transmitted them to the Bridge Commissioner. At any rate the Bridge Commissioner took the position that it was for him to say whether there should be a station there and if he was to build a station, why the cost of it should be paid by us. It was exactly the same situation as at the Center street loop. We said, on the other hand, that the contract defines a route to be furnished for this joint operation by the city, extending over the Williamsburg bridge, and over the plaza and connecting with the elevated railroad system in Brooklyn, and therefore, it was under the definitions of construction and cost of construction, and so on, in the contract an expense for the city.

That question has been hanging fire for a long while. Commissioner Hodge did send for me and asked what our position was with reference to that station, and I told him very frankly and he said it seems to be largely a question of getting the money. I told him that it was cost of construction, and chargeable to the city under the contract, and we knew that under our mortgage we couldn't pay anything towards that cost except what was defined under the word contribution, and inasmuch as our contribution that we had agreed to make had practically been exhausted, we didn't have anything left there with which we could pay for this station.

What they will finally do for it, I don't know. It is exactly the same in principle and it came up at the same time as this connection for the Brooklyn bridge, and whether the station will ever be built or not I don't know.

Senator Lawson.— Now, as a matter of fact, you never had any real informal hearings before the Public Service Commission even on this station bridge plaza?

A. No.

Q. Then, it is not the custom, do I understand, it is not the custom to have these informal conferences and hearings where there is a question between your company and we will say the Bridge Commissioner? A. I wouldn't say that because we have had a great many conferences with them on various subjects, but

most of our conferences are more or less conversal matters that would require consideration. These are matters that require consideration in the interests of the general public, but it is not of the category of such live day to day pressing questions that we usually have conferences over.

Q. Here is a subject we are discussing which is being largely agitated by a great body of people that reside and travel from Ridgewood and up through that section. There is eight hundred thousand dollars of the city's money locked up in the proposition. There is a possibility of relieving considerable congestion at the New York terminal, at this Williamsburg bridge.

With that in view, if you just simply had to deal with the Public Service Commission and with no intermediary like the Bridge Commission, is it your opinion that you would have been operating that to-day? A. I think we would have been several years ahead of the game if we could have laid out these transportation routes and constructed them and equipped them and operated them ourselves without any regulatory authority.

Q. I will ask you a direct question without reflection on any one as to whether you could have arrived at the conclusion of operation in this particular subway connection before this time if you hadn't had an intermediary body? A. In view of these new considerations affecting the Center street route, which I spoke of a moment ago, it is a question that our operating people could pass upon quite as intelligently as though from the Public Service Commission.

Senator Thompson.— Your idea is that if we hadn't had a Public Service Commission, that your operative facilities would be further along and better and that the public would have been just as well off?

A. Assuming that the co-operation of the city was forthcoming as to franchises.

Q. It has put you back in the old situation of having to arrange with the city authorities. If you had left the Public Service Commission out of it, do you think you would have been better off? A. I am quite sure that on these subway contracts alone we would have had to pay at least a million dollars more in money and

require two or three more additional years before we get to operation, largely because of the regulatory provisions of the contracts and the Public Service Commission.

Q. Do you think the public would have gotten just as much? A. I think they would have gotten more and got it more quickly.

Senator Lawson.— Wouldn't you say that you would be willing to experiment to take up the question of opening up this subway connection, arriving at some terms agreeable to your company and the city?

A. If the Commission and our own operating people think that it would relieve conditions, yes.

Q. My opinion was that you would do anything to facilitate transportation on your own lines, particularly in regard to the New York terminals? A. What I object to is these newspaper emanations from the Bridge Commissioner that sound very forcible, and are full of more or less indirect accusation, that tell only part of the truth and not all of it.

Senator Thompson.— Now, that is a good thing.

A. I think he would have qualified to be a member of your Committee.

Senator Thompson.— Now, if Mr. Bridge Commissioner goes to the public, that brings you to the public, and then the public finds out something about what you are doing and it doesn't hurt either one of you when you get all through. You like publicity for what you do that is good, and you always want public criticism for what you might contemplate doing that might not be agreeable to the public.

A. I like to be fair and square.

Q. I agree with you there that you should have the same newspaper opportunity to get to the public that the other fellow does.

Mr. Moss.— We have given it to him this morning, haven't we?

Senator Thompson.— Of course, I don't know how much they print about it, and it is immaterial to me. I can't help it, but

I have another idea too, and that is this. Now, I don't get myself behind it because I suggest it, and you don't have to agree to it if you don't want to, but what would you say to a proposition that might be seriously enough contemplated to make a law of it, that you repeal the Public Service Commission act and give the power back to the city through its newly constituted authorities, giving them about the same power in respect to the transportation as they now have in respect to water companies, where they have a sort of a dual agreement. They have some city operated companies, and some privately operated companies, and the city operates its own and regulates the other fellow. What would you say to that?

A. I think the principle of regulation is an excellent one, but it has been so poorly enforced or administered by public regulatory commissions that eventually it will break down of its own weight. If you will remember, when the Public Service Commission took the place of the State Railroad Commission under a new and elaborate law, the great argument for it, under the Hughes administration was that it meant greater publicity to the affairs and operations of the public service corporations. Of course, publicity was required under the old State Railroad Commission, but from that point of view alone, the law has been an awful failure. If you try to get any information about a railroad and turn to the annual report of the Public Service Commission, whether it is the up-State Commission or the down-State Commission, you won't find anything except what is in the nature of ancient history, as time flies nowadays, bearing upon what you want to find out.

Q. They don't publish their reports within a year and a half. A. Nearer three years. If you want to learn as an investor or as an inquisitor what the Interborough Rapid Transit Company, or the Brooklyn Rapid Transit Company, did last year or the year before, or even a year before that, unless some information hase come out very recently, you won't be able to turn to any public volume of the Public Service Commission that will give you that information. Now, in the old days of the State Railroad Commission, the reports used to be published for the fiscal year ending June 30, about January or February of the follow-

ing year. Now, of course, you can send to the Public Service Commission to get information, but you will be met with such a great mass of statistics, blueprints and all that sort of thing there, that you have to have an expert accountant to tell you what they mean, so that from the point of view of publicity, of acquainting the public with the affairs of a corporation, of acquainting investors with the operations of the corporation, the law is a great failure. Now, in other ways in the matter of regulating service, in the matter of stopping bond issues, why I am rather inclined to think that the operations of the law have been a good thing.

Senator Thompson.— Do you think that they really have in their power of supervision of capitalization, do you think they have in any way reduced, since they have been in power, the value of the Public Service securities to a safety?

A. Oh, no, I think that as regulation has been administered throughout the country, and I am not localizing my comments as to any particular Commission, but from the Interstate Commission down to the local commissions of all of the States, the tendency of their attitude toward restrictions of one kind and another, toward expenditures for improvements, some of which are justified and some of which are not justified, from a practical operating point of view, until those ways have impaired very seriously the security of the Public Service Corporation outstanding in the hands of the public, and they have raised a very serious question among investors as to whether the tendency of all of that kind of official restrictive and to a large extent intelligent supervision is not going to seriously injure the earning power of the public service corporations so that either the nation or the State or the city will have to take them over.

Senator Thompson.— You didn't understand my question and I don't wonder that you didn't because I didn't put it in good language. What I meant is that if you take into account just their operations in respect to capitalization; that is, they pass upon your bond issues, they pass upon your stock issues, they tell you how much you can issue and what for, has that created any more certainty in the minds of an investor in public service securities than before the Public Service Law was enacted?

A. Some bankers will tell you that it has, and others will tell you that it hasn't. I doubt very much whether it has made any difference.

Senator Lawson.— As regards the carrying out by the Public Service Commission of the regulatory part of the law, would you say that that has been successful? Are you regulated any better, any more intelligently in the operations of your road and your schedules, etc., than you were under the old railroad Commission?

A. Somewhat more intelligently and somewhat less intelligently. In some respects, they have more trained experts to give them advice, and in other respects, the advice tends toward a theoretical and not the practical end. The old railroad commission and their appointees were not all so well educated in the theory of accounting or in the theory of railroad operation, but they had more practical horse sense.

Q. Has the law been more onerous as far as the present Commission is concerned, the regulatory part, than it was under the old? A. Very much.

Q. Do you think that has been carried on successfully? A. I wouldn't say it had been carried out successfully. I think it has accomplished some good undoubtedly.

Q. Would you say that if the Public Service Commissioners in the first or second districts were confined to regulatory features exclusively, and the construction work taken away from them, that it would have a tendency to better conditions as far as transit facilities were concerned in behalf of the public? A. I testified largely to that fact last spring. I would go further and in the case of regulatory matters that are covered by the rapid transit contracts, and the contracts are full of all kinds of regulation, I would confer that power also upon the representatives of the city. It is a strange situation to-day, an anomalous situation, there the city is spending two hundred million dollars for rapid transit through a Commission which is not responsible to it, which is not appointed by it, and which has no interest except as competent honest public officials would have, in cutting off unnecessary expenses. The same thing is going to be true

after construction ceases, and operation begins. The city is going to be vitally interested in the result of these contracts, not the State, and not a State Commission. While I think that under present conditions, with the construction work about to be ended, that it would be a mistake to make that change, yet it was a mistake originally ever to have departed from that principle.

Mr. Moss.— It wouldn't be a mistake when operation comes.

Senator Thompson.— I was going to suggest that the counsel get a copy of those remarks and send them to Mr. Whitney and Speaker Sweet.

Mr. Moss.— Was it J. E. Swanstrom that spoke to you about Mayor Gaynor?

A. What do you mean about Mayor Gaynor?

Q. About the matter we had under discussion when you were here before? A. I decline to answer.

Q. Was it J. E. Swanstrom? Won't you say, no? A. I prefer to make no further statement.

Q. Won't you say no to that question? A. If I begin to say no or say yes, I might have to go through the whole category.

Q. I am asking that question, Mr. Williams, because of very distinct information that has come to me and I should hate to leave it in the air. Now, if you can say no to that, I wish you would. A. I prefer to add nothing to what I have already testified.

Mr. Moss.— We will take it up another day. I believe I said J. E. Swanstrom. In order to make the question perfectly definite, I mean the Honorable J. Edward Swanstrom, the former Borough president.

A. I assumed it was the same man. Let the answer stand.

Mr. Moss.— I refer to the same man to whom W. J. Gaynor, Mayor, wrote his letter of December 20, 1910, which was published in the newspapers of about that date.

Testimony of Charles Gast, after being duly sworn, was as follows:

Q. You are connected with the Longacre Electric Light and Power Company, are you? A. Yes, and have been connected with it since November, 1907.

Q. Do you remember the time of the negotiation with the Interborough Rapid Transit Company for getting surplus power from them? Do you remember there was such a negotiation? A. No. I would like to explain that. I didn't hear it directly from an officer of a company, but I have heard rumors around the offices.

Q. Did you actually lay a wire for the transmission power from the Interborough Company to your company? A. We applied to the Consolidated Telegraph Company on about May, 1913, we applied for subway ducts to run from our present plant to Eleventh avenue and Fifty-ninth street, which I understood were to connect with the Interborough power.

Q. At what point would the wire enter the Interborough premises? A. It ran to the corner of Fifty-ninth and Eleventh avenue. It didn't enter the premises.

Q. Was any power ever transmitted over that wire? A. The conduit was rented to us at that time, and we have been paying rent on the same ever since.

Q. Do you know whether that is subject to negotiations now with the Interborough Company? A. I couldn't tell you.

Suspended until 2.30.

Adjourned until 11.00 Monday, May 15, 1916.

MAY 15, 1916.

Committee met pursuant to adjournment.

Called to order by the Chairman.

Adjourned until May 16, at 11.00 A. M.

MAY 16, 1916.

Senator Thompson.— The Chairman of this Committee and counsel, Mr. Moss, has had a conference with Mr. Swayze, the chief counsel of the New York Telephone Company, during which Mr. Swayze has exhibited to us the list of requests made on his company for tapping the telephones for the past two years, and we have examined the entire list.

The Committee have concluded not to do anything further with this phase of our investigation to-day, but we will have Mr. Swayze or a witness to-morrow morning at 11 o'clock proceed. and we will have him before the Committee.

I want to emphasize that this Committee's power is to investigate for the information of the Legislature to enable it to frame legislation with more or less intelligence with relation to the Public Service Commission and the Public Service Law, and in relation to whether or not amendments to the Public Service Commission Law, transportation acts, and the Railroad Law should be amneded, and if so, how. That the limit and scope of this investigation, and, of course, it carries us not only to the Public Service Commission themselves, but to the public service corporations that have been supervised and regulated so as to gain the information as to whether or not they have been adequately supervised and regulated.

Now, this question of the tapping of telephone wires comes within the scope of this inquiry, because the telephone company is a public service corporation, and it is a matter of public concern as to whether wires rented of this public service corporation shall be devoted to uses if the persons who rent the wires do not know it and do not mention it in the contract.

And, in so far as that question comes up, it is not only the part. but it is the duty of this Committee to investigate and report whether or not there should be any legislation on this subject. The question as it has come before the public seems to involve another investigation which is being made by the government under the terms of the Moreland Act, the government having appointed a commissioner who is making inquiry in the questions of charities. I want it perfectly understood that the Committee have no power

to inquire in the question as to the operation of the Charity Departments of State. That is an inquiry with the Strong investigation, and we mustn't interfere with that and will have no power, nor would it be proper for us to do so, neither would it be proper for Mr. Strong to inquire into the administration of the public service. Keeping that in mind, this Committee will take up this investigation, beginning to-morrow morning at 11 o'clock.

Having spent the morning in conference, we will suspend until half-past two, when Mr. Gillespie will be present and we will proceed with this examination.

Witness THOMAS A. GILLESPIE recalled:

Examination by Mr. Frank B. Moss:

Mr. Moss.— Mr. Chairman, there are a number of documents which should be referred to and I would like to refer to each of these by date for identification in some way, and just put upon the minutes the portions of them that refer to the inquiry.

The first is a letter written by George H. Pegram, Chief Engineer of the Interborough Rapid Transit Company, dated December 29, 1913, addressed to the T. A. Gillespie Company, and says:

> "Referring to the invitations for contracts dated December 16, 1913, and for which bids were received and opened December 31, relating to the elevated lines I desire to get additional information that would assist me. I request you to advise me upon the receipt of this, stating first, how your company is equipped to perform the work, how much plant do you estimate that you would have to acquire, etc."

That is the substance of the first request. The second is:

> "If you have not sufficient plant or do not contemplate the purchase of sufficient plant to do the whole of the work contemplated, I would like to know just what proportion of the work you would be compelled to sublet, providing that you could do so."

This would indicate, Mr. Gillespie, that you were negotiating as far back as December 16, 1913?

A. That is the date we put in the bids.

Q. Well, you had some conferences before that? A. Not with Pegram.

Q. Well, you had some with the Interborough, with Mr. Shonts? How far back was that? A. Yes, I had several interviews.

Q. How many days back of December 16 was that — approximately? A. Well, I don't know that it was immediately before. I don't remember. I had several interviews when I first went to see Mr. Shonts about the work.

Q. Were they all in December, do you think? A. No, I think it was earlier. I am sure it was.

Q. Any further back than in November? A. Along some time in November.

Q. At the time of his letter, December 29, 1913, evidently Mr. Pegram did not know that anybody else was submitting bids for the work? A. It is a custom that the bids must state the qualifications, plant, equipment, etc. This was not stated in the specifications as I remember, and so I take it that that was what Pegram wanted to post himself on.

Q. But didn't the Interborough people know that you were in conference with Snare & Triest Company and Terry & Tench? A. Right away after the bid?

Q. Right away after December 16? A. Yes.

Q. I understand that is what he means when he says under December 29, "If you have not sufficient plant or do not contemplate the purchase of sufficient plant to do the whole of the work contemplated, I would like to know what proportion of the work you would be compelled to sublet, providing that you cared so to do." A. I should say that it was a matter of price. Whether Mr. Pegram knew about my talk with Mr. Shonts and Mr. Shonts specifying Snare & Triest, I don't know.

Q. Do you say that at that time, December 29, 1913, nearly the last of the year 1913, that Mr. Shonts did know you would be associated with Terry & Tench? A. He made the request. I immediately went to him and made the arrangements.

Q. Was the contract awarded after December 29 — after this letter of Mr. Pegram's? A. Oh, yes.

Q. Now, Mr. Tench testified before this Committee on a former occasion after the bids were submitted that we were requested by the T. A. Gillespie Company to take up the matter with a view to making this a joint contract. This was about December 13, 1913. What do you say about that testimony? A. That is a mistake. There is no such date as December 13, because it was after the bids went in, and after I talked with Mr. Shonts.

Q. Pages 196, 197 and 198, "The matter of a joint contract was taken up with us by Mr. Gillespie. I think we had some conversation prior to the submission of the bids, I am very certain we had." A. We did have some talk about the character of the work.

Q. But Mr. Tench says there that before the bids were submitted, you and he had conversation relative to the submission of bids. Do you agree with him? A. I do agree that we talked about putting in a bid.

Q. But it was with a view to making a joint contract? A. Not prior to December 16, no, sir.

Q. When was the earliest time that you had a conversation with him about a joint contract? A. It was within a few days after that; after I talked with Mr. Shonts I went to see him about the bids. He made the request that Snare & Triest be consulted and I sent for them and made an arrangement.

Q. He says later that the combination was shortly after the bids went in, so he corrects himself slightly there? A. That is the way it was.

Q. And he says that T. A. Gillespie was the first to suggest it? A. There was no other way to do, Mr. Moss. It was natural.

Q. He says that he did not propose to take Snare & Triest in? A. I don't remember about it.

Q. Do you remember what proportion Mr. Tench's company was to do? A. I made arrangements with Terry & Tench.

Q. But what percentage of the work were they to do? A. Well, it was about eighty per cent.

Q. He says, "It was proposed that Terry & Tench would do approximately seventy-five per cent, Snare & Triest fifteen or twenty and Gillespie the balance. Each company to furnish its

own plant." A. I think if you read through the testimony you will find there is a confusion on this division of percentage.

Senator Thompson.— This happened before you had made any agreement with him — that is, the percentage was made before you entered into your arrangement?

A. We did enter into the arrangement ——

Senator Thompson — Only a verbal arrangement?

A. Verbal arrangement provided we got the work.

Senator Thompson — Did you know in December the amount of work he would take?

A. No, I am quite sure I didn't, because I followed up a letter both to Mr. Pegram and Mr. Shonts that I had made a tentative arrangement with Terry & Tench and Snare & Triest that if we were awarded the contract, they would be associated with me.

Q. (By Mr. Moss).— The letter from Gillespie to Shonts reads:

> "With respect to my proposition of December 23, I would be glad to hear from you at the earliest moment. I suggest the following changes in my letter of that date accompanying the bids instead of the last two clauses: I have made tentative arrangements to associate with me in the doing of this work, Terry & Tench Company, Incorporated; Snare & Triest Company, and the T. A. Gillespie Company."

When was the conversation between you and Mr. Tench regarding this percentage — seventy-five per cent to Terry & Tench, fifteen or twenty to Snare & Triest, and the balance to yourself? When was that? A. It was along about that time, sir, I can't tell you the day. Some time between the seventeenth and eighteenth and the day that letter was written.

Q. Well, what was the seventy-five or eighty per cent? A. We were to join together. The Terry & Tench were to do about that. The rest ——

Q. The total profit allowed by the company, by the Interborough Company, was fifteen per cent. What proportion of that did Terry & Tench get? A. There it is exactly.

Q. I will read what we desire.

Division of Profits, Snare & Triest, $194,000, less plant and their overhead expense; Terry & Tench Company, $351,000, less one-half plant and expense and their overhead; T. A. Gillespie, Executive, $555,000, after deducting plant cost and two years' overhead expenses for organization at No. 50 Church street, $245,000; total $800,000. That means that the total less the gross profit to Snare & Triest, $194,000, the gross profit to Terry & Tench, $351,000, and the total gross profit to the Gillespie Company, $800,000. Those companies had some overhead expense to take care of, didn't they? And the total expense of the contract was made up of material purchased outside of steel, $2,448,096.49, steel, $2,230,594.44, labor, $4,293,762.76. Now, Mr. Gillespie, I notice that Terry & Tench took of the profit $351,000 while your company took of the profit $800,000, and Terry & Tench did seventy-five or eighty per cent of the work.

A. Wait a minute.

Q. Excuse me. Will you explain that? A. I can explain it in a way. In the first place, the T. A. Gillespie Company was charged with the execution of that work, all the buying, the delivering, transportation, the detail, the paying of the bills and the general management of the work, for which they deducted five per cent under an arrangement with Terry & Tench. That came off first, that is what we got for the execution of the work and the financing of it. We will start that way. Now, the T. A. Gillespie Company and the Terry & Tench Company entered into a partnership for the doing of about seventy-five or eighty per cent of the work.

Q. You were in that partnership? A. Certainly.

Q. Then what per cent of their profit did you receive? A. One-half for our financing them and ——

Q. Well, you got five per cent in the beginning for financing and then you get half of their profit for financing and half of Snare & Triest's profit? A. No, ten per cent.

Q. Ten per cent. A. We had no arrangement with Snare & Triest.

Q. You had no arrangement, no partnership? A. Their part of the work was comparatively small.

Q. What did they receive? A. About twenty per cent.

Q. Well, really Terry & Tench only receives about four and one-half per cent. A. That is about all.

Q. Well, did you have much difficulty entering the contract at that rate? A. You don't understand, I want to make it clear that Terry & Tench did their work well, but if any concern had gone out to do that work, furnish the money, buy the material, pay the bills, meet the pay-rolls and all that it would cost them a great deal more. Now, we did all that for them and it was a lot I will admit. All they had to do was to put the steel in place after it was put on the streets for them and in this way they were able to do three or four times the work in the same space of time.

Q. Well, you were not doing any other work? A. The biggest contract was that with Terry & Tench.

Q. Were you doing any other work during this period? A. Just small contracts.

Q. You were engaged in a garbage contract, were you? A. Yes.

Q. You were engaged in the pipe company, weren't you? A. Yes.

Q. You had some contracts besides these? A. Very small, yes.

Q. Compared to this they were small. You had work? A. Yes, sir.

Q. Your plant had been kept going? Your office and your plant had to be kept going didn't they? A. We confined ourselves to this work. We took no other contracts that would interfere with this work, therefore, the expense for the Gillespie Company, No. 50 Church street and all the other offices deducted from this five per cent.

Q. Now, Terry & Tench were free to do other work. Snare & Triest were doing other work up in Canada, Cuba and elsewhere, but the T. A. Gillespie Company was doing practically no other work. Why didn't they do all of the work? Why get somebody else to do most of it? A. Because we needed all the help we could get. I thought we would consider other business until Mr. Shonts put it up to me that we would have to take

the management of the work. And we had no right to take other work that would interfere with this work.

Q. Now, the letter from Mr. Gillespie to Mr. Pegram dated December 30, 1913:

> "Answering your first inquiry as to the value of the plant we have on hand, I could not say off hand, but we have considerable and we could easily acquire the necessary plants. In other words, we would not undertake the work unless we could do it within the specified time.
>
> With respect to the plant, we do not think that is the important question. It is the organization of other people required to do this work and we would propose with your consent to submit the proposition to Snare & Triest. In fact we have given all the work we have done for you a great deal of study and care in carrying it out."

Substantially, that is all that is important in that letter. Now, I will read Mr. Snare's testimony. I think this is page 651 of the record: "My recollection is that I saw Mr. Gillespie and he might have told me he was going to bid, and I might have told him I was going to bid. I think I had knowledge that Gillespie and Terry & Tench had been invited. I think I had several interviews with Gillespie between the time we submitted our bid and the time we signed the contract." The contract is dated February 30, 1914. It says we have financed our own construction, do you agree with that statement of conversation? A. Subject to the correspondence that you have there concerning bank loans.

Q. He says the total cost is likely to exceed the estimate, which was twelve million dollars, I think? What was the estimate? A. The estimate was along about somewhere between ten and eleven million dollars.

Senator Thompson.—Mr. Tench as I remember said eleven million. Wasn't the estimate to begin with about nine million dollars.

A. I think it was about ten million. It was somewhere between ten and eleven millions. We did not make up the estimate.

Q. (By Mr. Moss).— Can you tell us whether the cost of the work did exceed the estimate?

A. Practically no. It might have, but that was caused by more or less changes, sir, in the work.

Q. Mr. Snare further says, "I knew that Gillespie was to have twelve and one-half per cent on the work that we were to do for four and one-half per cent. Is that true A. Yes.

Q. Now, these conversations that you had with Mr. Tench and Mr. Snare before the bids went in, didn't you discuss the bids you were going to make? A. No, sir.

Q. Now, your bid was fifteen per cent? A. Yes.

Q. Snare & Triest Company bid was at fifteen and one-half per cent? A. Well, all I know is what I have seen in the testimony.

Q. Terry & Tench was next with fifteen and three-quarters. Now, that was the difference in those three bids that came in, fifteen per cent, fifteen and one-half per cent, and fifteen and three-quarters per cent. Snare & Triest was fifteen and one-half, and you gentlemen had all talked together before you put in your bids? A. Just as professional men talk, lawyers, etc.

Q. But that is a new way to me. A. It won't be after you get through. You confer as to what you shall charge this chap, I know you do.

Q. Maybe we do, some of us. A. You size them up and see how much they will stand for.

Q. There you are judging another from his own experience. You sized up the Interborough situation and charged what you thought you could get. A. My price was fifteen per cent.

Q. And the next fellow fifteen and a half and the next fifteen and three-quarters? And all three of you frineds? A. No, we weren't friends in any other sense than in a business connection.

Q. You weren't going to make any mistake? A. I was after that work.

Q. And you did not do a thing except to get another after the bids were over? A. After the bids were in.

Q. Of course, you understood each other, no price talked of, no sizing up of the situation, three people talking about the bids, talking before the bids were submitted and then you come in with fifteen, fifteen and one-half and fifteen and three-quarters?

Did you ever have a joint arrangement with Snare & Triest before? A. No.

Q. Did you ever have an arrangement with Terry & Tench before? A. No.

Q. Did you ever have a contract with either of those persons before? A. Not that I know of.

Q. Weren't you ever tied or bound in with Terry and Tench or Snare & Triest before? A. No.

Q. Well, then this is a new feature? How can you account for the closeness of those bids? A. Well, I was up in Rochester and one firm's bid was $129,000 and the other was $131,000. You might as well try to account for that.

Q. First you talked about the bids and then you joined hands after they were made? A. Well,——

Q. The records show that the Pittsburg Contracting Company bid eighteen per cent. Do you know what the Kent people bid? A. No.

Q. There are no fractions in either of those bids. A. I don't know.

Q. Did you ever bid on any of these large concerns with a fractional percentage before, or know your competitors to bid with a fractional percentage? A. Oh, yes, often.

Q. What companies? A. I will give you a list.

Q. Just give me one or two from your recollection. A. The Aluminum Company of America. Mr. Moss, you have rights that you want to preserve and so have I. I will give you a slip and show it to you.

Q. All right, you may do that. A. I will.

Q. Letter dated March 17, 1914 of Pegram to Gillespie says:

> "In reply to yours of the 6th, beg to say that we can consider tools for the Manhattan Elevated Improvements. These if destroyed must be part of the work paid for by the Interborough Company, and such is in accordance with the understanding had previous to the signing of the contract. It is understood that previous hardware and supplies are to be charged as part of the cost of the work."

Memorandum of the agreement, dated the 13th of February:

"The Terry & Tench Company and the T. A. Gillespie Company under contract of that date agrees that outside of the portion of the work done by the Snare and Triest Company and the T. A. Gillespie Company that not exceeding one million dollars, and the balance of the work to be done jointly by the Terry & Tench on the basis of the one-third to the T. A. Gillespie Company. The Terry & Tench Company are to furnish the plants for this joint work and the T. A. Gillespie Company are to furnish the working capital for the same. This work is all to be done on a ten per cent basis in accordance with the joint contract of the Terry & Tench Company, Snare and Triest Company, T. A. Gillespie Company and the Interborough Rapid Transit Company."

Now, you have spoken of financing this work. How much money did you furnish? A. That is a difficult matter to say exactly. At one time we had about one million dollars outside of any money due us for the retaining percentage.

Q. Did that million swing the whole business? A. That together with my credit.

Q. Well, did Terry & Tench use any capital? Did Snare & Triest use any capital? A. They did not use any money for material. They paid their own pay-rolls through an arrangement which we had by a loan at the Liberty Bank.

Q. Well, was this money furnished by you out of your own funds or did you obtain it through loans? A. Both.

Q. What proportion did you furnish out of your own funds? A. Well, I couldn't tell you that offhand? One loan was for $300,000 and there were other moneys borrowed.

Q. All the money that came from the Interborough Company came to you originally? A. Yes.

Q. Did you mean that the funds that came from the Interborough Company came to you direct? A. We had contracts and every payment was outside of the retaining percentage.

Q. Was the greater portion of that purchased out of your own cash resources? A. Well, yes, considering the money that I borrowed.

Q. Can you give me approximately the money that you furnished and the money you had to borrow? A. We carry a balance sometimes as high as a million dollars. I don't know just how it was divided.

Q. Perhaps you can tell me what you had to pay for the money that you furnished? A. We paid the ordinary bank rate of interest.

Q. What security did you secure the money on? A. On my own personal credit.

Q. We will let it go at that, I think that is reasonable. You paid one half a million dollars and the balance came out of your bank balance? A. Yes, I think that is a fair statement.

Q. Did you borrow any of that money from the Guaranty Trust Company? A. Yes, sir.

Q. Did you borrow the greater part from the Guaranty Trust Company? A. Yes.

Q. I find among the directors, Edward J. Berwind, Thomas W. McLaughlin, J. P. Morgan & Company, John D. Thomas, S. F. Ryan and others that I might add if you care to have me do so. Edgar L. Marston is also a director. The reason I mention his name is that I have in my hand the original contract between the Interborough Rapid Transit Company and the three companies which we have been speaking about, dated February 23, 1914, and a number of letters attached to it, of which I will read one:

> "December 23, 1913, Gillespie to the Interborough, in making the bid I have inserted clauses in the contract which follows:"
>
> Paragraph 65, "false work, sheathing, hardware necessary for the summary incident thereto it will be construed to enter into the general cost."
>
> Paragraph A. 6-b, "that we may establish a field office within which may be done particularly the checking of reports, the preparation of pay-rolls and other administrative duties, the salaries of the executive officers and the expense of this same will be part of the general cost."
>
> Paragraph 11, "this will be construed to mean that you can withhold any further amount."

The other clauses do not seem to relate to this inquiry and I assume that you furnish the electric power for the operation of your plant.

Now, were these suggestions, first about the false work, sheathing, etc., being included in the material and labor, the establishing of the field office and the furnishing of electric power, did you get under that?

A. I don't know.

Q. How much would it amount to? A. I don't know. Whatever it did amount to, it saved the cost of the work that much.

Q. Of course. Did the electricity supply all the power that was used? A. There were some boilers and other machinery I think that were used wherein we could use coal and this was often done, especially in crowded streets, etc.

Q. This field office, where was that? A. Oh, there were dozens of them.

Q. No. 50 Park place was the executive office and then you had these field offices? A. Yes, Mr. Moss, we had them so as to be convenient for the engineers, and there were dozens of them on each division. Some for the timekeepers and they didn't all come to the headquarters every day.

Q. Well, there were all of these field offices all centering in the main office? "That we may establish a field office wherein may be done the purchasing, financing, checking of material, preparation of pay-rolls and other administrative duties other than those of the executive officers, and the expense of the same will be a part of the general cost." That was agreed to? A. Yes.

Q. It was a fact that the general expense of the 50 Church street—— A. Fifty Park place.

Q. Was allowed as general cost? A. Yes, that is right.

Q. That included the purchasing which you have mentioned, the financing? A. No. The purchasing and the financing were done principally under the direction of the 50 Church street office of T. A. Gillespie Company.

Q. Well, it included the preparation of the pay-roll and the general administrative clerical work? A. Yes.

Q. That was except the salaries of the executives? A. It meant my salary and the different salaries of the officers; those at No. 50 Church street was not included in that charge.

Q. Exactly. But you can state how much was included in the cost of this third-tracking for the maintaining of your offices at 50 Park place? A. Fifty Church street.

Q. Fifty Park place? A. I can't give you offhand.

Q. How much was allowed for the purchasing, the financing in connection with those preparations of pay-rolls, the administrative duties of the contract, etc.? A. I can't tell you. Perhaps fifteen per cent.

Q. Well, you got fifteen per cent on the cost of your own office? A. That wasn't my office; that was their office.

Q. Well, you were getting five per cent of the fifteen per cent for administration and then you were charging for administration? A. That is wrong.

Q. Didn't you put it wrong when you said in the beginning that for five per cent you were attending to all of the administration? A. No, I didn't put it wrong, I say that that is right. We paid the timekeepers and stenographers at 50 Park place.

Q. Mr. Gillespie, upon this letter here, and your statement that this letter controlled all that you were really doing for that five per cent was furnishing your own salary, the salary of your son and the executive officers, isn't that so? A. No, it isn't so. The management of the work of all the offices were carried out at 50 Park place no matter whether it was the T. A. Gillespie Company, the 50 Church street office or the office at Pittsburg.

Q. Then, it was all charged to this office. A. The fact is I spent about two hundred fifty thousand dollars more than is charged to the Interborough for third-tracking work. I have just given you a statement of it.

Q. That included your salary and your son's salary and the executive officers' salary? A. Yes, and it included the rental that always goes on.

Q. Wouldn't that have been paid any how from your office? A. I would have done other business.

Q. But you put this particular business in an office at 50 Park place, and the Interborough paid the rent at 50 Park place? A. No, my dear sir.

Q. Didn't you charge the rent at 50 Park place in this statement, and didn't you charge the 50 Church street expense in this contract? A. Everything except the vice-president's salary.

Q. Well, the vice-president's salary, why wasn't it included? A. He was doing other work.

Q. But you had a complete organization for handling this business at 50 Park place, didn't you? A. Of course.

Q. And every cent except the vice-president's salary of that office there that was established at 50 Park place was charged to the Interborough contract, wasn't it? A. That is right.

Q. And you got fifteen per cent profit on it? A. There is no use — Mr. Moss, you do not take that statement ——

Q. Isn't this statement correct? A. It is correct.

Q. It is correct as far as it goes, but —— A. Oh, yes.

Q. Where did you say a single word until I said that you were getting a percentage? A. Put it any way you please.

Q. You didn't change —— A. I am putting it now.

Q. You had a chance before. Maybe you have another statement here? A. It is all there.

Q. It doesn't tell the whole story. A. That is the difference between you and me.

Q. It doesn't appear very clear to me. A. I want to make it just as clear as I can.

Q. And if at any point, Mr. Gillespie, you think I haven't got it all in, or right, you just hold it and I will give you a chance to put it in your own language before you get through. I get out some ideas, but I don't want to get in such a way as to be a wet blanket. A. All I ask is a square deal, and I will give you one.

Q. That is right. You had an understanding with the Interborough Company about the rates you would pay your engineers and your other people, didn't you? A. That is part of the contract.

Q. Now, for example, you have here, "one engineer five hundred dollars a month for Snare & Triest, one engineer four hundred dollars a month, two superintendents, etc.," were any of these men connected with the office at 50 Park place? A. All of them.

Q. They were all directed by the Park place office? A. Yes.

Q. Even the Snare & Triest and the Terry & Tench men? A. The Park place managed that business.

Q. The supplemental contract that was made, did that increase the work that you were to do? A. Yes, that increased the work, but it isn't finished.

Q. You took an additional contract at the reduced rate of twelve and one-half per cent? A. Yes.

Q. Well, was that contract in general? A. That is the connection at Queensboro bridge, the West Farms at One hundred Sixty-second street and the Fordham road.

Q. That was for new elevated construction? A. Yes.

Q. That isn't in the figures presented. A. It will be somewhere between four and five thousand dollars.

Q. Did Terry & Tench and Snare & Triest enter into that contract with you? A. No.

Q. Is that yours alone? A. Ours with Snare & Triest.

Senator Lawson.— How did they get into it?

A. Under an arrangement ——

Q. That contract was made when the contract we have been investigating was almost completed, wasn't it? A. About a year afterward.

Q. And the amount four or five thousand wasn't heavy for you? A. No.

Q. Why did you let Snare & Triest in on this work? A. Because they were on the work, and they had their plant and everything going. I wanted to get the work finished up as soon as I could.

Q. Was there any particular reason why they should want to do it? A. There wasn't any special offer, they said they would do the work for four and one-half per cent and I let them. I thought it was good business.

Q. Then you charged twelve and one-half per cent and they took it off your hands at four and one-half per cent, and they did the work? A. Well, they did the work in the sense that they always do, but we supervised and managed the work.

Q. How did you supervise their work? A. Just as we are doing it to-day.

Q. What is the date of that second contract? Was it about a year afterward? A. I think so.

Q. About a year after the contract was made which we are inquiring about, you made a contract with the Interborough for an extension in the Bronx costing about four hundred thousand dollars at a percentage of twelve and one-half per cent. Then, having that contract with them, Snare & Triest come in and say they would like to do that work for you and you let them do that work for four and one-half per cent, making a profit of eight per cent simply for superintendence. A. Yes.

Q. Aren't they using their plant, aren't they using their engineers, weren't they on the ground? A. That is the reason they wanted the work.

Q. They had been doing the same kind of work? A. Yes.

Q. You received the money from the Interborough and paid their bills? Did you furnish them any money to swing that contract? A. Certainly.

Q. How much? A. We buy all the material. We do just as we do in the first contract on a smaller scale. The work is going on now.

Senator Lawson.— You got eight per cent for assuming the responsibility?

A. Yes.

Q. (By Mr. Moss).— How was that contract let? On biding?

A. No, that as I remember was mentioned in the original contract. There was to be additional work. It was mentioned between Terry & Tench and Snare & Triest and ourselves. It said that any further work shall be done.

Q. Did that contract go through the Public Service Commission? A. I believe it did.

Senator Thompson.— Did they consent to the total per cent? A. Yes.

Q. (By Mr. Moss).— Has the Public Service Commission supervised that contract? A. Certainly.

Q. One of these competitors on the original contract was the Kent Contracting Company. Do you know those people? A. No, sir.

Q. Do you know who Mr. Kent is? A. Oh, I met Mr. Kent some years ago when he was connected with the Westinghouse Company. I do not believe I would know him if he were to come into the room to-day.

Q. Do you know Mr. Mellin? Mr. Mellin of Pittsburg? A. I know several Mr. Mellins, yes sir.

Q. Mr. A. W. Mellin? A. Very well, he is president of the National Bank.

Q. He is interested in the Westinghouse people? A. I don't know.

Q. Have you had any financial relations with Mr. Mellin? A. Mr. Mellin personally, or with his bank?

Q. With either? A. Oh, yes, we have done business with the Mellin National Bank for years.

Q. Have you talked with him about your contracts? A. I haven't any recollection of mentioning the matter to Mr. Mellin. There is no connection with Mr. Mellin or his brother R. B. Mellin, personally, directly or indirectly that I know of. I do business with the Mellin National Bank just as I do with other banks. I keep an account, a checking account there.

Q. Did you borrow any from Mr. Mellin or his bank or from the Union Trust Company for this contract? The Union Trust Company of Pittsburg, I mean. A. No.

Q. Was this Mr. Kent associated with the Westinghouse Company, do you know? A. He was for several year, eight or ten year ago.

Q. Did he ever do any subway work or elevated work to your knowledge? A. Well, Kent had charge — he is an engineer by profession — of the Westinghouse signal work on the subways as I remember it.

Q. Interested in steel and iron? A. I don't know.

Q. Is he interested in the Westinghouse-Church-Kerr Company? A. I don't know.

Q. Wasn't he vice-president? A. Of the Westinghouse-Church-Kerr Company, I think that is right.

Q. Have you done any work with Snare & Triest before? A. No, sir.

Q. Haven't you had business relations with Snare & Triest before? A. No.

Q. Didn't Snare & Triest turn over a contract to you on the Aqueduct? A. They bought pipe from the East Jersey Pipe Company.

Q. That is your company? You have a patent? A. It was a patent, it isn't now?

Q. It has run out? A. Yes.

Q. Do you know Mr. J. A. Bensel? A. Yes.

Q. Did you pay Mr. Bensel any money in connection with the Interborough contract? A. No, sir.

Q. But you pay Mr. Bensel July 31, 1914, five thousand dollars? A. Loaned it to him.

Q. Was there any business transaction between you and him at that time? A. He asked me to get that note discounted at the bank.

Q. How long have you known Mr. Bensel? A. I have known him for years.

Q. Did he hold any public position at that time? A. He was State Engineer.

Q. Was he ever chairman of the Water Board? A. Yes.

Q. Did you have any contracts in the Water Board? A. I did have under Bensel.

Q. Did you have any of those contracts in mind at the time the five thousand dollars was paid him? A. No, sir.

Q. Has that note been paid? A. Part of it.

Q. You spoke the other day about the contract not being a political contract. Was Bensel State Engineer when you borrowed that money? A. Yes.

Q. You had several contracts with the Water Board, didn't you? A. About ten million dollars worth.

Q. Do you know anything about the case of Riker-Connelly against Snare & Triest? A. Yes.

Q. Were you a witness in that case? A. No.

Q. Were you subpoenaed? A. No.

Q. Did you attend the trial, did you talk to Snare & Triest about it? A. I think I did. Oh, yes, that was in respect to this particular contract.

Q. Do you remember the testimony that was given by J. Gilmore Fletcher, president of the Riker-Connelly Company, in that trial? A. No, sir.

Q. Have you ever talked about it or mentioned it? A. I don't know, I don't think I ever had occasion to.

Q. Mr. Fletcher said he visited the president of the Snare & Triest Company on January 10. He said we introduced ourselves to each other. He said I told him that I wanted to confer with him about the contract of the Riker-Connelly Company with his company for the supplying of riveted steel pipe under contract 62 of the Water Board of New York City which had been awarded his company. He said, "Have you talked to Mr. Rodman?" I said, "I have. I told Mr. Rodman of the political influence that was injected into this matter. Well, Mr. Snare, I said, as president of the Riker-Connelly Company, I have come to discuss this matter with the president of the Snare & Triest Company." He said at once, "Do you know anything about New York politics?" "I wanted to know what that had to do with, and he said it has everything to do with it. Mr. Fletcher said that he told Mr. Snare nothing which to his mind would indicate that Snare & Triest had not lived up to their contract with his company. He said he supposed the powers that be, the political powers, sent word to me after we were found to be the lowest bidders, and before the contract was formally awarded, that it would be necessary for the Riker-Connelly Company's name to be substituted by the T. A. Gillespie. What did you answer? Mr. Snare, the powers that be said that you had a contract with the Riker-Connelly Company. Mr. Snare said that he had and added the matter of the contract would not be awarded unless such substitution was made. The name of Riker-Connelly Company must be taken out and the name of T. A. Gillespie put in. What did you answer? I said, Mr. Snare, I consider that you have entered into a contract with our company. Mr. Snare answered that he certainly never entered into a contract in better faith in my life, but the political influences are against the Riker-Connelly

Company, and would not want me or our company to enter into a contract with you for the amount of one million dollars, so we will be compelled to break with you. I am very sorry."

Q. Did you ever hear of that testimony? A. I have heard of it, yes.

Q. You didn't remember it? A. It went right out of my mind. I have done a good many things since 1910.

Q. You saw it in the newspapers? A. Certainly.

Q. There is a statement that the only way this company could do that work in the Aqueduct Water Board was to have your name substituted for theirs? A. As far as I know there is absolutely nothing to it.

Q. Do you remember a man named Hassett? A. Yes.

Q. Do you remember an inquiry by the grand jury? A. Yes.

Q. And how did Mr. Bensel figure in that? A. I don't know.

Q. Didn't you and Mr. Bensel figure as friends? A. I don't recollect.

Q. Why did you say very accidentally when I asked you whether you had contracts that they weren't political? It came out that you had done this acqueduct contracting, and it followed that it was not a political contract? A. That is some of Fletcher's gab, I can't ——

Q. It was sworn testimony. A. He lost his suit.

Q. Whether he lost his suit or disposed of it, he gave sworn testimony that the name of the T. A. Gillespie Company was to be substituted for the Riker-Connelly Company. A. I don't recollect it at all. I bid for the work and Mr. Bensel never asked me in the wide world to transfer Snare & Triest to us.

Q. Mr. Bensel was chairman of the Water Board? A. Yes.

Q. And the contract for Snare & Triest was trensferred to you, wasn't it? A. I don't know, Riker-Connelly ——

Q. Snare & Triest wanted to give it to Riker-Connelly? Isn't that so? Don't you know all about it? A. No, I don't know all about it.

Q. And a thing like that took place and you didn't remember it? A. I have no recollection.

Q. Riker-Connelly couldn't get that contract? A. I don't know why they couldn't.

Q. Because it had to be given to you? A. Nonsense.

Q. Mr. Bensel got this contract turned over to you, didn't he? A. He did not.

Q. You have forgotten? A. I loaned him money, and I should be very glad to loan him money again.

Q. And he knew where to go for the money? A. I would accommodate him again. I don't know of any one that I have as high regard for as Mr. J. A. Bensel.

Q. Well, did you ever get a contract with Mr. Bensel as head of the Water Board when you were not the lowest bidder? A. No, sir.

Q. Did you ever get the contract when you were the highest bidder? A. Yes.

Q. What contract? A. Tunnel under the river.

Q. And how many were below you? A. Two.

Q. Was Mr. Bensel head of the Board? A. No, Mr. Straus was head of the Board.

Q. That was Charles Straus? A. Yes.

Q. When did you get that? A. I should say about 1911 or 1912, something like that.

Q. "The T. A. Gillespie Company's success in landing contract No. 90 for the Hudson river siphon is still under investigation by the grand jury, which will inquire more closely into the reason for its award over the heads of two lower bidders. No. 68 also fell into Gillespie's hands under circumstances which lent credence to the report current among contractors that Gillespie was in right at the Board of Water Supply.

David Peoples, of Philadelphia, was low bidder on contract No. 68. He offered to build the seven steel siphons in Westchester county, as called for in it, for $1,189,000. T. A. Gillespie and East Jersey Pipe Company was the second bidder and only $14,000 above Peoples. From the statements at Peoples, engineer Joseph F. Pearn and rival pipe manufacturers who took their claims to court, it appears that T. A. Gillespie & Son, T. H. Gillespie set about immediately to handle the contract over Peoples' head, and failing in that, to induce Peoples to give them the subcontract in order to furnish the steel pipe."

Q. Well, do you remember the bid that Mr. Douglass made on one of these contracts that was lower than your bid? A. It was lower.

Q. Mr. Douglass made the low bid, you made the higher bid, and you got the contract? A. I was higher than Douglass.

Q. Upon what grounds were Douglass' bids rejected? A. All I know about that is that the Board of Water Supply gave the reason that that was a very important piece of work.

Q. Is that the only reason? A. That the Gillespie Company had an organization just completing another section, and that they were ready to go right on with that work. It was an important matter and the city had been working on the Hudson siphon and they wanted to be sure that it was done right. It was the connecting line between both sides of the water, you understand.

Q. Well, did Mr. Douglass or Mr. Hassett ask fifty thousand dollars in order to get that contract? A. I have heard something of that.

Q. Was Hassett indicted or was it Bensel's secretary? A. It is my recollection that Hassett wasn't there. I think it was Mr. Straus, I may be wrong, but I am quite sure I am right.

Q. Was it Bensel? A. I don't recollect Bensel, I am quite sure it was Mr. Charles Straus.

Q. I take your statement for that. Did you know that the Pittsburg Contracting Company had bid on this contract with the Interborough Company? A. Yes.

Q. You knew it? A. Yes, I am sure that has no direct connection with the present investigation at all.

Q. Mr. Gillespie, I would not have gone into this matter at all if you had not assured me that this contract was not political? A. I say so yet.

Q. Was there anything political in the Interborough contract? A. Absolutely no.

Q. You don't know any politicians? You haven't any particular friendships? A. No, no particular friendships at all.

Q. You would reject any help that was offered you, would you? A. Well, now, that is a hard question, isn't it?

Q. Perhaps it is. I am satisfied with your answer. Did any

politicians in New York know that you were interested in getting this contract with the Interborough? A. I didn't have any connection with this work.

Q. I was asking you about the Pittsburg Contracting Company. A. Yes, Mr. William Flynn and Mr. George H. Flynn of Pittsburg.

Q. That is the same Flynn that is in the Booth & Flynn Company that have some of these contracts here now? A. Yes.

Q. Haven't you had consultation about these contracts? A. Just in a general way.

Q. They had about ten million dollars in the Water Board? A. They had a good deal.

Q. They were competitors, hard competitors, Flynn and the T. A. Gillespie Company? Were they competitors on third-tracking? A. Certainly they were.

Q. Did you have any conversation with them before they bid? A. No, sir.

Q. They bid eighteen per cent. Did you know they were going to bid high? A. No, sir.

Q. Wasn't there an arrangement by which three of these bidders would bid, one of whom you knew would bid high and the other two would bid low? A. No, I said two or three times there was none. I will say it in any form you like.

Q. Did you know William and Frank Bradley, the contractors? A. Yes, sir.

Q. Did you have any conversation with them about this contract? A. No, sir.

Q. Did you talk with anybody connected with the Bradley firm about these contracts, about this third-tracking contract? A. No, sir.

Q. Now, you handed me a slip which reads, "$129,329.63 in the Liberty Bank," what does that mean? A. You asked me the other day if the moneys from the Manhattan Elevated Improvements work was deposited in different banks. There was some in the Liberty and that is it. You asked me if there was a balance in the Guaranty Trust Company, and here is the bank book.

Q. Do you know Mr. Quigg? A. Yes.

Q. Did you employ Mr. Quigg to do anything? A. Yes.

Q. When did you employ him? A. Well, I should say about eighteen months ago, something like that.

Q. What did you employ him to do? A. I employed Mr. Quigg to take up the probable suit against the city on the New York Disposal Corporation, to take up the question of the Sanitation Corporation, which is a branch concern of the East Jersey Pipe Company, and that is about all.

Q. Do you ask his opinion with reference to this Committee? A. No, sir.

Q. Do you talk to him about this Committee? A. I may have.

Q. What do you say to him? A. I say I may have mentioned this Committee.

Q. Had you been called when you saw him? Did you expect to be called? A. No.

Q. Did you think you might be called with regard to the third-tracking? A. I didn't know.

Q. You knew the Stevens matter had been criticised, didn't you? And your contract was even a larger percentage than the Stevens contract? A. I didn't know what the Stevens percentage was.

Q. Didn't you hear five per cent to twenty per cent? A. Lately, since you have been examining. That is long after I had any talk with Quigg.

Q. Well, what was Mr. Quigg to go to Albany for? A. I don't know.

Q. Didn't you expect him to go to Albany? A. No, sir.

Q. Did you know Mr. Quigg before you employed him? A. I have known him some time. He was in Mr. Cravath's office.

Q. Who suggested that you employ Mr. Quigg? A. I employed Mr. Quigg after talking in Mr. Cravath's office about the sanitation work and the disposal contract.

Q. Mr. Cravath is your counsel in those matters? A. Yes.

Q. Well, if Mr. Cravath is your counsel, what do you need of Mr. Quigg? A. Mr. Cravath is a pretty busy man.

Q. What made you think that Mr. Quigg was your man? A. Because he has had a wide experience in sanitation.

Senator Thompson.— Political sanitation, you mean.

Q. Something was said about the garbage business, is that another thing? A. Yes. I will explain sanitation in a few minutes.

Q. I am more interested in the sanitary agents than I am in the sanitary business. A. We will discuss that. I am quite sure Mr. Quigg was sent to Albany before there was any talk of the Thompson Investigating Committee.

Q. Was Quigg employed by the Interborough Company? A. I don't know.

Q. He tries cases for them? A. Practically every day he has accident cases for the Interborough.

Q. He has been on the staff for a long time and is very successful in the trial of accident cases? A. Yes, but I am sure it never entered my head in employing him at all. Never thought of him having anything to do with the Interborough.

Q. You hadn't the slightest intimation that he was employed by the Interborough Company? A. I didn't know.

Q. Do you remember of Mr. Cravath's telling you? A. No, I don't think he did.

Q. Didn't I understand you to say that your employment of Mr. Quigg was in consultation with Mr. Cravath? A. I talked about the matter with Mr. Cravath, certainly.

Q. Did he give you any reason why your office couldn't handle it as well as Mr. Quigg? A. I don't know that he did. I have no recollection of his giving any reason at all. I had several discussions with Mr. Quigg about this sanitation business. He had a wide acquaintance and at the same time I brought up this matter of the city claim on the Disposal Corporation. The garbage business is entirely distinct from the other, and I sent him a check for twenty-five thousand dollars; one-third by the New York Disposal Corporation, one-third by the East Jersey Pipe Company and one-third to the T. A. Gillespie Company. That was an arbitrary charge to each concern. That is the explanation of that. The fact is, Mr. Quigg has been quite successful in the sanitation work and we now have a number of contracts.

Q. Have you paid him anything since? A. I believe so.

Q. How much?

Senator Thompson.—Are all these corporations, the East Jersey Pipe Line, and the Pittsburg Contracting Company and all of these, are they all owned by the same company?

A. I will tell you. The East Jersey is controlled by the T. A. Gillespie Company.

Q. The stock ownership is not identical? A. No, they are smaller stockholders. I think the T. A. Gillespie Company own one-half. I own individually one-quarter of the East Jersey and my son owns a quarter.

Q. And what about the other concerns? A. The Pittsburg Contracting Company is the same concern.

Q. So that when you draw a check on one it is the same as drawing from the other? A. That business is kept separately.

Q. You have a running account with each concern? A. No, it is this way. I will give you an illustration. We have taken a contract for the city of Rochester, the East Jersey Company will furnish the pipe, the T. A. Gillespie will manage the construction of it in the fields, lay the pipe, etc.

Q. You handle the accounts of the East Jersey Pipe Company and the T. A. Gillespie Company separately? A. Yes. Just as though they were two different concerns, excepting that I sometimes run things just about to suit myself.

Q. What about the Sanitation Company? A. There are different stockholders.

Q. You haven't the control? A. Not exactly, I think we have about half.

Q. That enables you to have your own way in the management pretty well? A. Well, personally, I don't attend to the Sanitation Company's business at all. I have very little to do with it.

Q. (By Mr. Moss).—Is Mr. Quigg a stockholder? Is Mr. James Gaffney a stockholder?

A. No.

Q. Is Mr. Gaffney connected with that company? A. No.

Q. Mr. Gaffney is in the New York Disposal Corporation? A. You are getting the two confused, sir. The Sanitation Company is entirely different from the New York Disposal Corporation.

Q. Haven't you conferred with Mr. Gaffney with regard to the Garbage Company, isn't he in that? A. We bought his stock long ago.

Q. Didn't Hart bid for that contract, and wasn't he in some arrangement with Mr. Gaffney and a man by the name of Van Etten and a Mr. Paine? A. I don't know.

Q. Didn't he represent Hart? A. All I know is that one day I was down from the Thousand Islands, and was asked by Mr. Paine's representative if I wouldn't like to take a slice of that stock and I said "Yes."

Q. Which Paine do you mean? A. His initials are R. W. I think, R. William, Paine.

Q. Did you buy Gaffney out? A. Yes.

Q. Did Gaffney stay in after you bought his stock in any capacity?

Senator Thompson.— Has any officer of the Interborough Company, or of the Inter-Met. so-called, or the Interborough Consolidated Railroad Company any stock, are any of them large or important stockholders in any of those concerns — in any of your companies that you have mentioned?

A. No, absolutely.

Q. (By Mr. Moss).— Did you supply the paint on the third-tracking?

A. I don't know.

Q. Didn't your work include paint? A. I am not sure. I think they painted it themselves.

Q. Perhaps you have some information available?

Mr. T. H. Gillespie.— We painted it.

Q. I would like to know what paints you used and what you charged and from whom you bought the paint? A. I will obtain that for you.

Q. Well, did you not have to submit it beforehand? A. We submitted it. Oh, yes, everything sir.

Q. Did you have to get the O. K. of the Interborough on the price before you used it? A. Yes.

ALEXANDER ST. CLAIR, JR., being duly sworn, testifies as follows:

Q. Mr. St. Clair are you an accountant connected with the office of Perley Morse? A. Yes, sir.

Q. And have you investigated the accounts of the T. A. Gillespie Company and T. A. Gillespie, Executive? A. I looked over them some.

Q. I want to ask you if you found that any moneys had been sent to the Pittsburg office from T. A. Gillespie Company, and any money had been returned from the Pittsburg office to the New York office? A. Not in the books of T. A. Gillespie, Executive.

Q. Where did you find it? A. I cannot answer that.

MR. PERLEY MORSE, recalled:

Q. Did you examine the books of T. A. Gillespie Company? A. I examined the books of the T. A. Gillespie Company, or had them examined under me at 50 Church street.

Q. And did you find that moneys had been sent from the New York office to the T. A. Gillespie office at Pittsburg? A. Yes.

Q. And did you find that moneys had been sent from the Pittsburg office to the New York office, and did you find that there was a system of reports between the two offices, showing these two transactions? A. Yes, sir.

Q. And did you find that there was a balance either in the Pittsburg or in the New York office on these accounts? A. Yes, sir.

Q. How much money in any given period had been sent to Pittsburg, and state the period? A. January 1, 1914, the Pittsburg account of T. A. Gillespie shows a balance of $698,853.95; cash charges from that date up to December 31, 1915, amounting to $603,016.04 (?) and the other charges amounted to $113,954.16, making a total of charge to Pittsburg of $1,415,724.15. Then, during the same period the account was credited with cash, $334,532.53; other credits amounted to $266,030.32, making total credits of $600,562.85 until the total debt balance at December 31, 1915, was $815,713.15.

Q. And do you find anything in the books which you saw that explained those items? A. A great many of the items could be explained.

Q. But how much is unexplained by the books you saw here? A. In that amount there is some two hundred thousand dollars. There was an agreement that was made with the First National Bank, I think, on account of moneys owed by the T. A. Gillespie Company. That is at the time of their failure. It is discounts for loans and liquidated that amount and that amount enters into this $815,000. Then, besides that there are other small items that on the face ——

Q. They amount to how much? A. It is impossible to calculate them, because there are numerous items.

Q. What I want to know is the amount approximately that is shown on the books that are available to you? A. These various cash items here, in most instances the entry is just cash and it is impossible from this schedule before me to tell just what particular items of cash would apply against these two hundred thousand dollars and to tell what relation it has to the other items in the schedule.

Q. Well, do you find some hundreds of thousands of dollars, the disposition of which you could not discover upon the books that were open to your investigation by the T. A. Gillespie Company in New York City? A. That is true.

Q. And can you say approximately what figure you are not able to trace, so as to be able to say that the books showed what disposition had been made of the fund?

Senator Thompson.— The books as you have seen them?

A. That is impossible to state.

Q. (By Mr. Moss).— Did you have conversations either with Mr. Gillespie or with his son, or with Mr. Johnson, who is manager, or other persons representing the T. A. Gillespie Company with reference to the reports that passed back and forth between the New York office and the Pittsburg office?

A. Yes, sir.

Q. State the substance. A. We asked them about the various amounts that were sent down there to Pittsburg, and it was ex-

plained to us that it was cash sent in a good many instances to meet maturing notes.

Q. With reference to the function of these reports, was there anything said about the nature of these reports? A. Oh, yes.

Q. State what you know about them? A. Those reports represent the money sent to New York from the Pittsburg office and from the New York office to the office at Pittsburg.

Q. Were these reports shown to you so that you could read them? A. No, sir.

Q. Did you ask for them? A. I did.

Q. Was it admitted that they had in New York the T. A. Gillespie reports? A. Yes, sir.

Q. Have you before the Committee now those reports between the New York office and the Pittsburg office?

Mr. T. A. Gillespie.— I must state that we will not produce those reports.

Q. They are here now? A. They are in — Mr. Gillespie has them in his pocket.

Mr. T. A. Gillespie.— We will not submit those reports. I am very glad to state in this connection all I can. I am here as a willing witness, but I am not willing to have my books gone through. I wish to state plainly that there is nothing there in connection with this work at all that covers anything wrong, or are there any improper charges.

Q. But don't you see, Mr. Gillespie, that that is making yourself the judge of whether there is anything wrong about these reports, or whether there is anything not wrong, which would point to other persons the very function for which this Committee has been created, that its judgment should be passed upon facts as they may develop. Is there something about your business that you want to conceal? A. It is my private business, I don't want it made public.

Q. Those accounts covering the periods when you were doing this work upon the elevated railroad, isn't that right? A. That is right.

Q. And it covers a period when you were receiving the money

of the Interborough Company and were disbursing it under these contracts, doesn't it? A. Yes.

Q. And you were receiving from the Interborough all the money that they paid, weren't you? A. Yes, sir.

Q. And you were financing all of the contracts that were made both with yourself, Snare & Triest and Terry & Tench that we have been discussing in this testimony? A. Yes.

Q. And these moneys were deposited in the banks, the checks were drawn on those banks in connection with the work, weren't they, and checks were drawn for the Pittsburg office, weren't they? A. That last was a separate account.

Q. Weren't checks drawn on those banks and sent to Pittsburg? A. Yes, but they were drawn on a different account.

Senator Thompson.— You kept more than one account in the same bank.

A. We kept the Manhattan Elevated separately.

Senator Thompson — Where?

A. In the Guaranty Trust Company.

Q. (By Mr. Moss).— Were there any checks drawn upon that account that went into the T. A. Gillespie Company?

A. No, not on that account except that particular item I gave you — that one hundred twenty-nine dollars.

Senator Thompson.— You say all the moneys from the Elevated went into a special account in the Guaranty Trust Company?

A. Yes, all except that one check, which went into the Liberty.

Senator Thompson.— So that all of the money you got went into those two accounts?

A. Yes, sir.

Senator Thompson.— In checking out from those accounts did you check out any to the T. A. Gillespie Company or any of the other companies that you control?

A. Just my personal check, I don't understand.

Senator Thompson.— To the T. A. Gillespie Company, the pipe company, the sanitation company, or any of the other companies that you checked individually?

A. Not that I recollect. I think that account was kept strictly for the use of the business done at 50 Park place.

Q. (By Mr. Moss).— I would like to know what disposition was made of the funds in the Guaranty Trust Company?

A. That is some job.

Senator Thompson.— You can tell us in a general way.

A. I suppose we could get the information from our books.

Q. (By Mr. Moss).— That special account contained your profit, didn't it?

A. Part of it, I suppose.

Q. It contained all of your profit? If it contained all of the money that the Interborough paid you, it contained your profit, didn't it? A. All except that check in the Liberty.

Q. How did you get your profit out of that company? A. I drew to ourselves.

Q. Then, you drew out of your accounts to yourself? A. That is the only way.

Senator Thompson.— That is what we wanted to know. We don't care to investigate your private affairs at all. Could you get the accounts in some kind of shape, so that we could look at them?

A. I have here sheets showing the transactions according to your subpoena the last time, and here are some balance sheets and here are itemized statements of the money sent to Pittsburg, showing the money sent back and paid out, and these to my mind show very clearly what was done with the money.

Senator Thompson.— Let me take them over night and then if I can't understand in the morning, I can have you explain further.

Suspended until to-morrow morning at 11 o'clock.

Adjourned to May 17.

MAY 17, 1916.

REV. JAMES A. MCKAGUE sworn:

Examination by Mr. Moss:

Q. Are you a pastor of a church in New York City? A. Congregation located on Tenth avenue between Thirty-sixth and Twenty-sixth streets.

Q. Have you in your church a man by the name of Moore? A. Yes.

Q. Ernest Moore? A. Yes.

Q. Was he employed in the Broadway subway construction? A. Yes.

Q. Do you remember the time of the accident there, that cave-in? A. I do.

Q. Did Mr. Moore speak to you about his work before that accident occurred? A. He did, on two or three occasions.

Q. I wish you would tell what he said to you, what you said to him, and what you did. A. Mr. Moore was out of work and I wrote him a reference, and another gentleman secured employment for him in the subway, and he went down there to work. He worked in the subway possibly a good part of the year. He came to me and told me the work was exceedingly dangerous. I asked him if the employment was hard. He said "No," but it was dangerous. I asked him what the danger was, and he told me that the danger consisted in escaping gas and steam and that the rain came down in torrents when it rained. The insulation wore off because it saturated the wires, and as a result of that three men were injured, two of whom were killed by electric shocks, and he said that he was constantly in danger of being killed. I said he didn't mind so much formerly, but he said he was a man of a large family and did not want to leave his children without support, and he asked me if it would be possible for me to find another place for him to work. First he told me that one man had been killed, and then he came back in a week or two and told me another man had been killed. Then he came back the third time. Then the cave-in happened on Seventh avenue. That is not far from the community of my church, and I was particu-

larly interested in the cause the people of our community were working for. At that time it was up to me to get a position for Mr. Moore. I looked around and found another position for him, which he took and kept. That was how he got out of the subway. I asked him what the danger consisted of, if they were given any protection by the fire department, and he said that the men who came there and were supposed to investigate as thoroughly as they might, remained on the street. He also said that there were dangers, such as these: When the rain would come in, a heavy rain would wash away the sand and dirt from the upright, and instead of putting in a new upright they would simply shovel in some dirt under that and let it go at that. As he had asked me two or three times, and then when the cave-in occurred I felt it my duty to get him a position, and right along with that I was riding on a train on the night that accident happened. A gentleman whom I met on the train and I began to talk about this thing, and I told him what one or two workmen had told me about not having proper timber, that the underpinning was not safe. He said he had heard the same thing. He said that a lumber merchant had told him the day before the accident happened that the Seventh avenue subway was going to cave in because the underpinning was not of the proper size and lumber.

Q. Can you give me the name of the lumberman? A. The gentleman's name was Rogers.

Q. I think you spoke of some other workmen talking to you. A. There was another workman working a little while, but I do not know of any of the particulars except that he was injured.

Q. What is his name? A. His name is Durkin; I think it is William Durkin.

Q. Well, did you write to the district attorney? A. I did.

Q. When did you write to Mr. Perkins? A. I read in the paper that Mr. Perkins intended to appoint a committee or commission to make an investigation, and as I heard from several sources that the underpinning of the subway was the thing that possibly caused the accident, I wrote to Mr. Perkins telling him the information I received from these men who have been familiar with it, and suggested that if he were appointing a committee it

might be a good plan to appoint the lumber experts on the committee.

Q. Did you tell him that you had information from men who had worked in that subway as to conditions? A. Yes, sir.

Q. Were those men ever called for? A. No; Mr. Perkins thanked me for my letter.

Q. That was the last you heard of it? A. Yes.

Senator Thompson.—Did you notify Mr. Perkins before he investigated the matter?

A. I think that it was about the same time, because I read in the paper about it.

Q. How long after the accident did you write him? A. I could hardly tell offhand.

Q. How many weeks? A. It was about the same day that I saw the Evening Telegram statement that he was going to appoint a committee. The same day I heard of that I made that suggestion.

Q. Did you write him before the coroner's investigation was closed? A. Yes.

Q. You had an idea that Mr. Perkins wanted to find out why the accident was caused? A. Yes. I wrote him because I thought it might help him.

ERNEST R. MOORE sworn:

Examination by Mr. Moss:

Q. You worked down in the subway and you belong to Dr. McKague's church; you are the gentleman he spoke of in his testimony? A. Yes, sir.

Q. What section did you work in? A. No. 2 section, that runs from the Battery ——

Q. Where was that, what street? A. From the Battery.

Q. Was it the section where the cave-in occurred? A. No, sir.

Q. What contractor were you working for? A. I was working for the Interborough Rapid Transit Construction Company.

Q. Were you ever in the section operated by the United States Realty and Improvement Company? A. No, sir, I was not in that section.

Q. Did you observe any accidents down there? A. Yes, sir; I saw a man get killed on one occasion with a hammer that they drive the pipes to the underpinning.

Q. How did that happen? A. That happened by throwing a chain over the top of the beam, and on the top of this beam was an electric wire run across, and the chain with the vibration of the rope running through wore the insulation off the wire and sent the current through the chain, through the rope to the man that was working the rope, and the man was holding the hammer of say five to seven hundred pounds, the hammer that they drive the pipes down with. He had hold of the hammer to keep it in position when it is driving the pipe, in a way so that it won't drive the pipe one way or the other, and the current struck through the rope into the hammer while he was holding it. Of course, the man could not let go, nor the man at the rope could not let go. Finally the hammer was going and the machine going, and the hammer struck the man and killed him.

Q. Was the rope wet? A. Well, it was wet with oil, the oil from the pulleys, you see, would attract the electricity, and then his hammer was also wet.

Q. Now, what was the next fatal accident? A. It was on the same principal; just the very same.

Q. Another man killed? A. Just the very same way, sir.

Q. How many men did you see killed? A. I saw two killed and one injured, all in the same way.

Q. Was the insulation worn off the wires? A. It was. You see, the insulation was worn off the wires that pulled through the snatch box and that is the way they worked the rope to drive the hammer on the machine on top. I will explain to you for what underpinning they drove these pipes, for the underpinning of the elevated structure, right from the Battery up to whatever street it continued to on that route. Well, they drove pipes down there and then filled them with concrete, and that is what they used the hammer for. Then they had to put from three to four snatch boxes to run the weight. The weight would not come in contact with anything else, to run it right in the center.

Q. What did you observe about the underpinning? A. Well, when there was a great rain storm, of course, the water would

run down in there and wash away the dirt underneath, and, of course, they would not have time, just at that time, to put a new post in. They put dirt under instead.

Q. Did you see any sagging of the superstructure over the underpinning? A. You would see it drop naturally.

Q. Were you ever in the section operated by the United States Realty Company? A. No, sir.

Q. Did you know any men that were in it? A. No, sir.

Senator Thompson.—What do you know about the underpinning?

A. Because I worked down there.

Senator Thompson.—Was it the underpinning of the Realty Construction Company?

Mr. Moss.— No, this relates to some of the sections where the cave-in occurred, but I want to develop the suggestion as to how the inspector inspected.

Q. Did you know Public Service inspectors when you saw them? A. There was only one Public Service inspector who inspected on that section, that was all, only one.

Q. How often did you see them? A. Any time you came on top, up on the street.

Q. But he was not down on the work? A. Not unless you went up and told him there was something the matter and he would go down and see it and then go away and you would never see him again.

Q. How long did you observe that condition? A. I was there about six or seven months.

Q. What months of the year was that, about? A. Well, let me see.

Q. Springtime, summertime or wintertime? A. It was in the winter months.

Q. How many times in that period did you see the Public Service inspector down where the work was being done? A. Twice.

Q. What kind of work were you doing? A. I was on the underpinning, helping with the timber.

Q. That was the timber that was relied upon to hold up the structure upon which people walked and cars traveled and wagons ran? A. Yes.

Q. If it was not put up right that might fall down? A. Yes, certainly.

Q. What did you see the inspector do when he was there? A. He did not do anything.

Q. Those two times you saw him what was he doing? A. He was up on the street.

Q. You saw him twice, what was he doing? A. He was walking around. Somebody must have fetched him down. I fetched him down on one occasion on a burst.

Q. A water main? A. Yes, sir.

Q. Then you had to tell him up above that a water main had burst? A. Yes, sir.

Q. What was the occasion of his being down the other time? A. On a gas leak.

Q. Did you bring him down there? A. No, sir, one of the other laborers fetched him down.

Q. Were there any other public officers inspecting? A. No, sir.

Q. Any representative of the fire department? A. No, sir, I have never seen any one.

Q. Who gave any orders about putting the dirt under those timbers where it was washed out? A. The timberman himself did that.

Q. What was that? A. Mr. FitzGerald.

Mr. Moss.— Of Course, Mr. Chairman, it is obvious that there is no reflection on the District Attorney in any of this testimony.

JOHN L. SWAYZE:

Examination by Mr. Frank B. Moss (Witness is sworn):

Q. Mr. Swayze, you are counsel for the Edison Company? A I am general counsel of the New York Telephone Company.

Q. Are you familiar with the matter of listening-in on wires in this city? A. I am familiar with it, yes, sir.

Q. What is the term that you use in describing that operation? A. It is described as bridging over, described as wire tapping and

described as censoring, any one of the terms meaning the same thing.

Q. Has there been a listening-in on the wires by any of the public authorities of New York City under any practice that has been understood and recognized? A. Yes, by the department of police.

Q. By any other department? A. I do not find any record that shows that any other department has been listening-in. There has been information asked by the district attorney's office both in Kings county and in New York county, but there were statements made that there was listening-in by the attorney's office, but the general praceice of listening-in has been by the department of police.

I have prepared a statement, not with the idea of following it, but with the idea that I could state the situation, and if it is not abhorrent to the practice of this Committee, I should be very glad to proceed, because I have gathered certain evidence correlated to the whole subject.

Q. I think that is a good idea. A. I am making a statement from which I am going to testify.

Senator Thompson.— May I see the statement?

A. Certainly.

Q. I suppose that follows the line of the conversation that you had with Senator Thompson? A. Surely.

Q. I think it is proper to put upon the record that Mr. Swayze has been in conference with the Chairman of the Committee, so that between us we have a general idea of the facts that are within your knowledge, and I would be glad to have you follow the document you have prepared and we will ask questions. A. I do not see any objection to the counsel seeing it.

Senator Thompson.— I do not believe that the Chair will take any position that we will limit Mr. Swayze in any way.

Q. For my part I would like to have him say what he wants to say and if there are other matters that we want, we will question him. A. The practice of wire tapping or listening-in goes back to about the year 1895, so far as I am able to determine by any

investigation, that is, by hearsay, back of practically 1914. Originally it was done in rather a loose and informal way upon a mere verbal request and no record was made of it. In 1895 a law was passed which is known as section 552 of the Penal Code, with the title: "Divulging the Contents of Telegraphic or Telephonic Messages." With the consent of counsel I would like to read that into the record. (Mr. Swayze reads section 552 of the Penal Code.) The company interpreted that law to impose upon it a general duty to aid and assist public officials in the detection of criminals, in the apprehension of criminals, and in the conviction of criminals. This statute has never, so far as I am able to learn, been interpreted by any judicial body of this State, but a decision was handed down in April, 1916, by Judge Mullen of the Supreme Court in the case of the People against the New York Telephone Company on the relation of Gottsegen, who kept a cigar store at 3244 Third avenue. This is a decision of the court as it appeared in the New York Law Journal as of April 12, 1916. Application for peremptory writ of mandamus to compel respondent company to furnish telephone service to the petitioner who conducts a cigar store at 3244 Third avenue, Bronx. The respondent takes no direct part. The city intervenes and takes opposition that the police has reason to believe that the store was being used by certain men as their headquarters, as the police made the telephone connection with the store on the 17th and 18th days of March and made elaborate note of the making of bets on race horses. The affidavits of the police officers show conclusively that bookmaking was conducted in the place. As the result of this the respondent discontinued its service. I think the police were acting wholly within their power and that the respondent is not merely within its right but that it would properly be subject to censor and restraint if it did restore service. It is quite as much the business of the police to prevent crime as it is to arrest criminals. Indeed, it must be obvious that the taking of preventive measures would constitute the most important part of police work. If you need any other statutes and cases, see 23 Appellate Division and 66 Appellate Division.

Q. That is a decision by Justice Mullen? A. Yes. We have a very large number of cases where the police request us to dis-

continue the service, that is, take out the telephone instrument, cut the wires or do something.

Senator Thompson.— Is this the first decision you have been able to find?

A. No, we have had quite a number of decisions, but we have never had one which is so much in evidence as this.

Q. This is Justice Mullen, the gentleman who was formerly the Mayor's partner? A. I so understand. We have a large number of cases where the police request us to discontinue service, in fact the general solicitor's office of the New York Telephone Company, which is an office which has more direct charge of the trial work of the company, has a man, a large part of whose duty is to go in and fight cases of this kind and protect the interests of the company. Almost invariably where we refuse service, there is a demand made by the subscriber to renew the service. Of course we are required to supply service to all alike, and the police department and the city government desire that we take the matter up and fight it. There was no particular interest any more than the putting in of the service, and with the business we have in New York it is rather a trivial matter. The amount involved in the fight is more serious to us than the service, and in that case it is evident from the decision of the court that the police did listen in on the wire, evidently by a tap.

Q. That is, without going through your formal practice? A. No, they have evidently had a tap made with our consent. I have not checked that up to see. The position taken by Judge Mullen in the Gottsegen case was very sweeping and was in accordance with the position that had been taken by our own legal department. The practice of tapping wires went on, and as everything in a great corporation at some times comes up, it was looked into and was decided about two years ago that some check should be put upon it so that we could prevent it from running wild. Recognizing, as we did, that it was a very serious matter, that whatever justification we had for aiding in the detection of crime or the enforcement of the criminal laws, if the police or any other officer should use it for a private purpose, it would create an irreparable damage upon the company. The company was deriving

no profit from the matter at all. It did extra work, but was never compensated. So an arrangement was made with the then commissioner of police, Mr. Woods, that we should have a letter in every case requesting the cooperation of the company, and stating that the purpose of the cooperation was in order to aid in enforcing the criminal laws. That was to be signed by some officer, detailed by Mr. Woods, generally and acting detective sergeant of some grade and to be endorsed and approved by Mr. Woods or by some of his assistants if Mr. Woods was absent. The form in which that appeared was addressed to our general manager or some other official and ran:

> "Sir.— I have reason to believe that the following telephone is being used for criminal purposes and respectfully request your cooperation in investigating the same."

Then appears the signature of the detective sergeant, or whoever the officer was, and the signature of Mr. Woods with his official title, and a line on it showing the number (the designation was purely by number and the central office, as, for instance, Bushwick 797).

Q. That is, they would not specify anybody's name? A. No.

Q. Has it been your practice since the matter was systematized two years ago, to have the signature of the police commissioner upon every application for listening in that was granted? A. That is the routine we have established and that is the practice we have followed, and the only exception made to that practice — and that was not a permanent exception — was that where the police would come to us late in the afternoon and say that they had an emergency case; the detective sergeant would then sign it. We would then set up the tapped form and he would supply us at a very early date with the approval of the police commissioner.

Q. You are able to show the police commissioner's signature for all the listening that has occurred in the last two years? A. Absolutely correct.

Q. Did you take any measure to be informed when these requests were made, whether the police had proof that crime had been committed? A. No, sir.

Q. Then it is quite possible, indeed probable, that in many of

these cases that crime had not been committed, at least there was no proof that crime had been committed but there was a listening in upon supposition. A. That is almost self-evident, Mr. Moss, from an examination of the record, that a great many cases of listening in appeared which did not "pan out" as the police had expected. That must necessarily be the case.

Q. Do you think that the provision of law which you have cited, section 552, is a sanction for the practice of listening-in where crime is suspected rather than where crime has been proved to be committed? A. I have always refrained from taking any decided decision on section 552 for the reason that it never had been interpreted by a court. It was so serious a matter that I did not think the opinion of any lawyer was sufficient to pass upon a question so serious as that was. Personally, I believe that that law is laid down as the general public policy of the State, whether the expressed provision of the penal statutes are sufficient or not, that it is our duty to aid the police in listening-in or in whatever way to detect crime.

Q. On supposition or upon allegation by them that there is supposition? A. Yes.

Q. Do you not claim that the decision of Judge Mullen interprets section 552, do you? A. I do not.

Q. Judge Mullen's decision in the main part of it was holding you harmless for refusing to give service to these people? A. Yes, and saying that we had performed our duty.

Q. You were upheld in refusing service for these people in a case where there was positive proof that the law was violated? A. Yes.

Q. What about the police, through overzeal or political influence, saying to you, we suspect, when there is no real ground for it? A. I have taken the position on that that the minute we exercise a discretion, except in a manifestly clear case where a name of such prominence appeared that it would be out of all reason, or the location would be such that the telephone company could not set itself up as an arbiter in that matter.

Q. Suppose an individual who is not prominent, but who is nevertheless respectable, suppose an individual is a woman, respectable, and her home, we will say, is put under surveillance at

the request of the police department, do you ever look into such a case? A. We do not.

Q. Supposing you had the name of Mrs. John Smith, residing for instance at 115 East Thirty-fifth street, we will say — now she is not socially prominent about the neighborhood is a good neighborhood — it looks like a respectable neighborhood — and the presumptions are that that woman is a lady and not criminal, do you do anything about a case like that? A. We do not.

Q. How do you draw your line? How do you draw your line as to the people you inquire about? A. We never have been compelled to draw the line. Where that line could be drawn I do not know.

Q. Supposing you were asked to give a wire on a law firm, a law firm that has not been hauled up before the Bar Association, and it has as good a reputation as lawyers can have, what would you do about that? A. Suppose that it did not occur very frequently and that it was not the name of very prominent people in New York, it would be put up and tapped.

Q. Which is a prominent law firm? If it was a law firm like Delancey Nicoll or Mr. Moss, you would ask questions about it before you would do it? A. Yes, sir; that is very nebulous, that proposition.

Q. It is inaccurate, is it not? A. It is inaccurate. It is not in proper shape. Our first step was to obtain the authorization from Mr. Woods, and we watched it. The result of our watching was that the police were not using it excessively, nor did it seem to us unreasonably. I think that is shown by the fact that since the first of January, 1913, until the present time there have been only 350 taps — that may run a few over or a few under — put altogether by the police department, although we have in the city 350,000 subscribers.

Q. That is, 350 taps in two years? A. In a year and a half. And we have 640,000 telephones in the city at the present time. There were on yesterday afternoon, the last I heard, twenty-five taps.

Q. I do not mean to interrupt your line of thought. A. You do not interrupt me. We recognized before the tapping trouble broke, because we discovered that under the system there had been

tapped a wire that should have been stopped or some inquiry should have been made. Then for the first time it was brought to me. As the man in charge of the legal affairs of the company, I commenced to try to work out some method of checking it up.

Q. Will you please give us a little more information? Why did you come to the conclusion that that tap should not have been made? A. Because he occupied a position — upon our examining what name was attached to the number we found he occupied a professional position in the community — which of itself should have put us on the inquiry, we thought. Not necessarily that his professional position relieved him of any position of crime, but it was enough to put us on our inquiry. Then I was confronted with the proposition which you have touched on.

Q. When you looked into that matter did you find it was a case where interference should not have been made? A. I cannot say. We know nothing as a result of any tap, except that we read in the newspapers that some gang of thieves have been found or that a murderer has been captured.

Q. There is no public report of this being made at all? A. No, sir. A letter comes to us from the police commissioner, and we put on the tap. Then the police is able to listen to all incoming and outgoing conversations from the time the tap is put on until the police order that tap removed. We have nothing whatever to do with it. We know nothing of what passes over the line. They simply notify us that they no longer desire to have the tap, and we remove the tap. We obtain the information then from the public press; we are in the same position as any other public citizen. The police tell us that some man accused of murder has been captured, men accused of murder have been convicted, thieves have been apprehended, gangs of thieves indulging in systematic robbery in the commercial district, the downtown drygoods district, have been found, but we know nothing as to whether that is so or not. We do know that we have put on taps and we are satisfied through the daily newspapers. It has been of great assistance to the police. That brings me to the telephone company's position on that sort of matter.

Q. Before you get to that, I suppose the police departments of some other cities make similar requests upon you? A. As

far as I have been able to learn there has been no request from the police departments of any other cities except here in Greater New York.

Q. Of all the police department in Greater New York, none but the New York police? A. None. I mean New York State.

Q. Would it be brought to your attention if there were such requests? A. It would not except within the last few months or within the last year.

Q. Have you any record of any such requests from other cities? A. I am pretty certain we have not, because with the publicity that has been given to this thing, our people in the field would have been sending in their records and we have no such records.

Q. You are the man in the company that has been particularly looking after this subject of late? A. Yes, formerly it was in other hands, but I am looking after it now and will look after it in the future.

Q. Is there any reason why you should not tell the case where you thought there should not have been a tap without your inquiry? A. No, I have no particular objection. It was Father Farrell's wire. If it had come to me that it was the wire of Father Farrell, I would have been on my inquiry and looked into it.

Q. What is the longest time that any one wire has been tapped? A. I could not tell you.

Q. While you are speaking of that, I refer you to the tapping of the wire of the law firm of Seymour & Seymour. Did you understand that that tap was made upon suspicion that a crime was being committed? A. We had the same letter on Seymour & Seymour as we had on anything else. That is all we had to guide us.

Q. Their wire is included among those that were tapped? A. Now, you have come to a point, Mr. Moss, where I would like to take this position. If we go into the names of people included in these 350, a serious damage will be done to some people who I believe never have been guilty of any crime. I don't think that it will serve the ends of this Committee, which I understand is an investigation to see what changes ought to be made in the Public Service Law.

Senator Thompson.— Mr. Moss, if you feel that you should make inquiry about these names and Mr. Swayze takes his stand, we will take it up at the executive session.

Mr. Moss.— All right, we will do that.

A. I understand that the purpose of this is to determine that, in the opinion of this Committee, should be done to improve the Public Service Commission Law in New York State. The Public Service Commission Law gives to the Second District Commission a power over the rules, regulations, practices and service of the telephone company. I recognize, to say at least, that that would come within the view of the work of this Committee, but I can't see how the giving of the names of these individuals will give any assistance to the Committee in obtaining the information which they want. I have stated the practice that has prevailed, the number of taps that have been made, and the general way in which the telephone company has carried it on, and how saying that Mrs. John Smith, of any address, had her wire tapped, will aid you I cannot see.

Q. It was not my intention, when I mentioned a particular name a minute ago, to begin and ask a lot of manes. A. I did not suppose it was.

Q. The Chairman and myself and you have been in some conversation and we know each other's views on that subject, but the reason why I mentioned the name of Seymour & Seymour was that I wanted to draw from you if possible whether any effort was made to differentiate between an inquiry in original matters and an inquiry that had relation entirely to commercial matters.

Mr. Seymour is in the room and I would not have mentioned his name without his consent. That is a matter that has come up.

A. I will meet that. I did not catch your drift.

Q. I could not have mentioned them, except that a member of the firm is in the room. I think it would be very unwise to mention names generally from the list because it might subject persons to suspicion and criticism who were perfectly innocent of any wrong doing. A. We made an inflexible and invariable rule that only in criminal cases shall we provide this information which

is obtained by means of tapping, censoring, and so forth. There is another class of information ——

Q. Upon that you rely absolutely upon the O. K. of the police commissioner, you assume that is its purpose? A. Exactly. We have applications almost weekly from people who want to obtain information over telephone wires for private, commercial, political and other purposes. There is an invariable rule that we will never supply that information except in criminal cases, and that rule I do not believe is ever broken, and if it was broken and any man in the organization was discovered to have used his position in the organization to supply such information, he would lose his position immediately. The operators that handle our calls literally handle millions of calls a day. We have set down our regular rules, called the "General Regulations for Operators." On page 7 appears under Secrecy of Telephonic Communications the following (Exhibit 3):

> "The attention of operators is called to the fact that the law makes it an offense punishable by fine or imprisonment to violate the secrecy of telephonic communications. All employees are accordingly forbidden to divulge any information obtained regarding communications between users of the telephone and are cautioned against listening unnecessarily on connections."

Senator Thompson.— This section 552 simply affects a clerk, operator or messenger or an employee who divulges in the first place the nature of telephonic or telegraphic despatch. That is the first part of section 11. Then any person occupying a position in the telegraph office who refuses to deliver a telegraph or telephone message except when it is in relation to unlawful business —— That is the second part of it. Now, the third part of it is that when it shall appear than an offense at law or an unlawful business or traffic is being carried on, then it shall be the duty of the corporation or employee to furnish to any public officer all information in their possession relating to said unlawful business.

Now, as I read this section, it simply implies that when it shall first appear that there is an offense at law or unlawful

business and traffic being carried on or conducted, then it becomes your duty to furnish the public officer any information relating to the unlawful business that is in your possession. I don't believe that that means that you should furnish the conversation that is in your possession. You don't have possession of the information that is carried over the wire.

A. No.

Senator Thompson.— Now, that is my interpretation of this law and everybody else is welcome to take their own.

A. I only go so far, Senator, on that interpretation to say that it seems to me that there is a declaration of the public policy of the State that the corporations should aid. Now, how we are to aid in the identification of the criminal I do not know, and I do not know what was meant by it. That law was drawn originally in 1895 when the development of the telephone business was very much smaller than it is to-day.

Senator Thompson.— The law reads as though it were drawn by one of your lineman.

A. It was not. We do not have lineman draw up our laws. We recognize that a telephone company was incorporated as a telegraph company, and it was not until after 1895 that we commenced to grow. The statute mixes up telegraph dispatches with telephone communication in a way that it is hard to separate them. I grant you that, but I do not think that law did by its terms seem to recognize the public policy of the State to follow on as to the effort of the telephone company in guarding the messages that pass over the lines. We also have posted in each office where the operators worked, framed, hung up, a notice to employees which reads as follows:

(Mr. Swayze reads notice to employees, which is marked Exhibit 1.)

Our operators when they come into our employ are put into a training school, and after having been there they are put on boards and generally trained for their work. In the course of this training they are instructed always not to violate the secrecy of telephonic messages, and it is well understood that any operator who

shall divulge will be subject to immediate discharge. Now, there has been more or less misunderstanding and misapprehension in the minds of the public regarding what we know as our test or listening-in board, which is situated at 58 West Houston street. At that address we have a board where our employees are continually engaged in picking up wires, testing them, listening to conversations long enough to test for the purpose of seeing whether the operators are performing their work properly and skilfully and I have here a sample copy of one of the listening-in tests on information call, which we would like to exhibit also. (Listening-in call in information test, marked Exhibit 2.) The general purport of it is that it shows the line, and it shows the length of time that elapses between the calling and the answer, it has a blank to show whether the answer was improper, failure to repeat and various other things that go with service. You appreciate that in New York we must keep service up to the very highest service, it must be quick, efficient, and particularly is that so in the downtown district. It may be of interest to you to know that to take a girl from the residence district who may be the most efficient on that board and take her down to Wall Street and she is an absolute failure, and you take a girl from the downtown board and put her on the uptown board and she goes to pieces. We try to hedge around the whole matter in every way possible to prevent any information that may be used for blackmail, for private purposes or anything of that kind. I hope that we have met with success. I am inclined to believe that we have. I would like to say that from the time that we made the arrangement with Commissioner Woods till the present time we feel that we have acted in the best manner possible, and that there never has been an attempt so far as we know, certainly until this late unpleasantness, where there was any justification for criticism of what they desired. Now, as to the secrecy of the wires: As the business has developed, and particularly in New York, with the large apartment houses uptown, where everybody is served through a private branch exchange, and before their calls go through our central office they pass through that exchange handled by an operator of the apartment house, and the same thing holds as to the private enterprises downtown, the minute they insert anybody between

our central office and their point of calling they have thereby eliminated to a certain extent privacy and secrecy of their wires, and as the business has grown that has increased. There has been a good deal of talk about detective agencies being able to co-operate with the telephone company in getting on wires. That is absolutely untrue. They cannot, nor can any other individual, with this possible exception, that where a man has a large internal system of his own and desires to check up his employees, we consider that he has a perfect right to check up.

Senator Thompson.— For instance, a man has a big building with five hundred telephones and he wants to tap up his wires, you do not think that is any of your business?

A. Not as long as that is on his own system.

Senator Thompson.— For instance, if I was in a big building and the landlord wanted to get me tapped, why, he could do it and you need not know anything about it, and could do it even if you were trying to prevent him.

A. Yes. We cannot stop him.

Senator Thompson.— Otherwise, when Mr. Detective Agency says that he can tap any wire there is, he has fooled the public.

A. If the public believes him, he has fooled them. I will explain that to you. Every big office building downtown is a honeycomb of telephone wires. It is a trite saying that without the telephone and the elevator New York would not have room on the street for people. Now, you take an old building of old-fashioned construction and the wires are of very easy access, much easier than they are in any of these big buildings. A man in order to tap a wire in any big building must have first access, opportunity, which can only be obtained by collusion with some employee in the building, must then be able to find the wire of the man that he wants to tap, and, having found it, he must be able to carry it from that point to some other point. He has to conceal his tap wire, and while it is possible in a modern up-to-date office building, with the wires concealed behind cement walls, it is almost outside the line of probability, and besides that the City of New York has all its wires carried in underground conduits, and they must

get access in some way to a circuit in an underground conduit. As the business has gone on there have been developed men who understand the telephone business. I have no doubt that you can go out on the street and find a man who can tell you how to do the tapping, but you have to have all these opportunities, and it is perfectly amazing to find how few complaints we have of people who even suspect their wires have been tapped. Of course, of late, the people whose bills have been unpaid have given us as a reason that their wires have been tapped, and, therefore, they refuse to pay; they say that they have not gotten the service that they bought. We are bound to have those troubles. We expect that. We have three hundred and fifty thousand subscribers. I think I am pretty nearly through.

Q. Can the subscriber see or know anything about the tapping? A. He cannot.

Q. Would an expert know that his wire was being tapped? A. No, sir. We cannot tell by our listening-in test if it is properly made.

Q. Now, these messages are intercepted for the police. Do you mind telling us — I do not ask for the location, but the method? A. They have a room located at some convenient spot, entirely disconnected with our building, and which from a certain position on their switchboard — I think it is either twelve or fourteen positions — they indicate to us that they want the tap to run to such a position, and they have someone there who listens in, and, I believe, takes stenographic reports.

Q. How does the operator work? A. She sits with the receiver and when the bell of any tapped wire rings ——

Q. How does it get down to the room that is being used by the police? A. We bridge it across.

Q. Who? A. The telephone company cuts in by putting a wire across from the police wire, which runs to their private switchboard from the wire of the person they want tapped, so that anyone calling in is put on the tapped party's wire, and that immediately ties them up through the tap to the police wire running into their private board.

Q. Now, you showed to the Chairman of the Committee a list of the wires that had been tapped in the last year and a half.

Did that list show all of the tapping that has been made? A. Yes, sir, by the police commissioner.

Q. And will you furnish to the Chairman of the Committee, not for public use, but for his own use, a copy of it? A. Yes, sir, if in the executive session you decide you want it. I would like to have an opportunity to appear before the executive committee.

Q. What I want to get for the Chairman is a record that would be a protection to him and to this Committee as between this Committee and your company, not for public use, for I think I have intimated the reason why names should not be published, but so that this Committee should be protected in the investigation which it is asking. A. I will do that, as I have tried, in behalf of the instructions of the company, to co-operate with you in every way.

Q. I want to get upon the record here, for the protection of this Committee, a statement from you that you have exhibited to us all the calls or all the connections that have been made, and I want to have within the reach of this Committee as proof, if it should ever become necessary to make it, that we have what you have sworn to as the correct record. A. I will assist you. I will go before you in the executive committee, give you my reason, and if you then decide that this Committee desires to have it in their possession, I will do it.

Q. Have you ever considered, for the protection of the public, whether the persons in charge of switchboards in various places ought not to be employed by the company, or at least under the rules of the company, for the protection of the public? A. Yes, we have considered that. We believe that service of the public at the large hotel and the large apartment house would be a good deal better, or at least could be improved, if they would take operators trained by us.

Q. I don't speak of the training, I speak of the protection.

Senator Thompson.—I will give you a little legal advice, which is that should they furnish their operators to do the listening-in on these taps, that might render them personally liable.

Mr. Moss.— I am speaking of the general service — hotel service.

A. We are having all to do with taps that we want to have.

Q. Mr. Swayze, there is a bureau in your system in which operators listen-in? A. Only the one I have described there on Houston street.

Q. I am not speaking of the police. A. Only as a routine matter for the protection of the service, and I have here the statement made by the operating vice-president of the company in regard to that very matter, which appears in the World this morning. I am perfectly willing to incorporate it as part of my testimony. This appears in the morning World of Wednesday, May 17, 1916, on the first page. This is Mr. R. F. Thurber, vice-president of the company, and I would say that in an interview given out to the World, which he this morning told me was correctly quoted by the World, he said as follows:

> "The bureau for routine observation of telephone service is located in one of the company's buildings, No. 58 West Houston street. The Observation Board, which accommodates about fifteen service observers, is installed in the premises, and from this circuits are extended to all the other central offices in Manhattan and the Bronx.
>
> A separate board for a similar purpose is established in one of the Brooklyn Central Offices for the observation of the service in Brooklyn and Queens.
>
> These boards, or their equivalent, have been an integral part of the telephone service for a good many years. Their object is to permit the observers to record the time elements and the general efficiency of the work done by the operators — not only those who answer the subscribers' calls, but information operators and others of whom the public has no knowledge.
>
> The observers listen successively on many lines; a certain group of lines, selected arbitrarily, is observed in the morning, another group in the afternoon. The lines selected are those answered by many different operators, the object being to observe the efficiency of the operators' work and

to time the different elements which go with the telephone service, such as the times it takes the operator to answer after the signal is received, the time it takes the called party to answer, the time it takes the operator to disconnect, etc.

These operators make no records whatever of anything other than the service elements above described and record nothing relating to telephone conversations.

The system I have described has no relation whatever to the privileges accorded to the Police Department. Any records of conversation reported by the Police Department have been made by that department's own employee."

Q. Mr. Chairman, in consenting that any part of this matter shall be taken up in the executive session, I want to say clearly, so it can't be misunderstood, that I am sure we have no disposition to hide in the executive session anything that has a public bearing whatever. The only reason why I consent is that there is upon the list of names, as we saw it, a large number of names, some of whom probably are respectable people, and as the suggestion is that these police taps are made for the purpose of preventing crime, we might unwittingly expose persons who could not easily defend themselves from suspicion by recklessly throwing their names before the public. It is only with that view that I make my recommendation that we go into executive session over the list that contains names. A. May I add to that other distinct class of the existing twenty-five taps we have disclosed?

Q. You mean in a case where there are criminals in active operation, and if their names were published it might prevent their capture? A. Yes, sir.

I have a short statement I would like to make at the end. The New York Telephone Company has never derived any benefit, financial or otherwise, from this tapping of wires. It has been a matter of very serious disturbance to us. It is a matter that we would like very much to be relieved from and we would be very glad to co-operate with the Chairman and this Committee in the passing of a law and the preparation of a law which will stop entirely all espionage on wires. It will relieve us from

what we consider to be a very serious burden and detriment to us. There are certain matters such as are brought up by our service tests, that it is imperative that in order to maintain the service that we do things of that kind. A bill was presented, the Burlingame Bill, which was so general and sweeping in its terms that it might have made it a crime for any of our people to listen-in on those wires in order that they might find out whether the wires were repaired or not. So that I will give any assistance to this Committee, because of the seriousness of the situation, the great aid that it is to the police department, the benefits that have been derived by the general public by the conviction of criminals, and preventing of crime, and in apprehending criminals is so great, that the New York Telephone Company does not feel that it can justify itself in refusing to aid in the administering of justice.

Q. Mr. Swayze, are you quite clear in your recollection that no private agency, as far as any knowledge has come to you —— A. I have taken very great pains during this whole proceeding to inquire of those who are acquainted, I have been with the executive officers in charge of the operation, I am assured by them that that is an actual fact not subject to any qualification as I have made here to-day. I would like to express my appreciation of your kindness in letting me present this on behalf of the company in the way we have. The company certainly feels that it has been given a full, fair opportunity to state its position in this whole matter.

MR SEYMOUR is sworn:

Q. Mr. Seymour, are you a member of the law firm of Seymour & Seymour? A. I am.

Q. Is your brother another member of the firm, with District Attorney Swann at this time? A. I understand so.

Q. He left to go there? A. Yes.

Q. Were you aware that your wire had been tapped? A. Not until that statement was made this morning by Mr. Swayze, except through the newspapers.

Q. What was the ocassion of your brother's going to the district attorney this morning? A. We had no information, we went to see what information he had.

Q. I understand, but what instances had occurred in your business which led your brother to go to Mr. Swann? A. We saw by the newspapers, and Mr. Swann told us that he had information to show that our wires had been tapped and a dictaphone had been put in our office.

Q. When did you see that? A. Three or four weeks ago.

Q. What is the information that came to you as to the circumstances which led to the tapping of your wire? A. The O'Farrell Detective Agency had two men at our office four or five weeks ago who said that our wires had been tapped and a dictaphone had been established there.

Q. Under what circumstances? A. That I do not know. We do not believe it. They asked if they could investigate for themselves and see whether any dictaphone had been established there, and they did so.

Q. Who did he say was interested in tapping the wires? Give the conversation as nearly as you can. A. As to the tapping of the wires I do not know, but it was said that Mr. Burns, the Burns agency, had established a dictaphone in our office and had been there and looked over our papers evening after evening in the office and we did not believe it, and they came in and looked around and came the next day and found no indication of any dictagraph or anything the matter with the wires. Then it seems that they went to Mr. Swann, the district attorney, and told him that Mr. Burns had established a dictaphone and tapped our wires. It is said that the district attorney immediately sent for Mr. Burns and he admitted that he had established a dictaphone in our office and tapped our wires. Then we did not believe it.

Q. Well, now, was this wire or this tapping of your wire, or whatever it was, was it connected with any criminal investigation? A. None whatever, nor any shadow or the faintest indication of one.

Q. Did you see your wires? A. Yes, sir.

Q. Tell what the circumstances are that led up to this. A. A large transaction was going on in our office and went on.

Q. Commercial transaction? A. A business transaction in regard to munitions and arms for the Allies, in which large interests were engaged on both sides.

Q. Were the Morgan interests involved? A. I do not know. It lasted six weeks, and in the course of that six weeks my brother and our clients were down at the Morgan office five or six times in conference with the heads of the firm. I do not know what interest they had in it, except that it was said that they had a financial interest back of the opposing parties who were negotiating this contract. The matter is with our clients.

Q. It was a matter where your clients might get the contract or the Morgans might get it, was it not something like that? A. It was an executed contract. The Morgans have part of the payment of it. They had a financial interest as we understood it in the party that was not our client and was dealing with our client.

Q. So far as the contract was concerned, it was a contract wherein the Morgans might have an interest? A. Yes.

Q. Now, was it in connection with that that you understand that the Burns Agency had some activity? A. I cannot say that.

Q. Where did they come in? A. That I do not know. I never believed that there was a big concern in the city or State of New York that would put a dictaphone in a private law office, and I do not think so now.

Q. Did O'Farrell state to you who had employed Burns? A. No. We do not know and that is the main thing we want. We are making a very careful investigation. We do not care who put the dictaphone in or who tapped the wires so far as the detective agencies are concerned. We desire to know who employed the detective agency.

Q. The fact is that there was a tap put on your wire through the police department; that is the fact? A. The newspapers say so.

Q. That is the fact; I have seen it; at least, I have seen the order for it, signed by Commissioner Wood. Now, the only interest that we have in this is whether a police order made for the specific purpose of detecting crime has been used in a matter that is not criminal. A. Of course, it has if it has been used at all. There is absolutely no possibility of its having been legitimately used in our office in this matter or any other matter to detect crime, and I do not think that anybody said it was there to detect

crime. Anybody who was using this detection of crime pretense used it as a throw-off to mislead somebody, because if it was there for the only purpose it could be there for it was not to detect crime, and it comes down to one of two people.

Q. What do you mean by that? A. I mean that the dictaphone was put in there by interests that desired to know what was going on in these matters.

Q. What do you mean, one of two people? A. I mean one of two corporations. I do not wish to tell that now. The circumstances would show that nobody but two interests would desire to put a dictaphone in our office.

Q. Those are commercial interests? A. Yes. They are commercial and business interests.

Q. Well, do you know whether any progress has been made in the district attorney's office upon the inquiries that you have made there or your brother has made? A. I only know that the district attorney says that a dictaphone was put in and the wires were tapped, and our efforts have been to ascertain who was back of it all as a principal.

Q. Has any official been taken or promised by the district attorney? A. He has promised to prosecute if we make a complaint.

Q. That is where the matter stands now? A. No.

Q. State anything else there is. A. We have asked the building to ascertain whether any person under the circumstances can put a dictaphone in a tenants' office in that building or tap their wires, and they are now making an investigation and have employed counsel.

Q. Your offices are in the very modern Equitable building? A. Yes.

Q. Where they have all the protection for the wires in the walls and ducts and everything else that can be? A. Yes.

Q. In comparing your own wires did you notice whether there was a small wire running along the regular wires? A. It was taken out before we had any intimation that it had been there. Mr. O'Farrell said it had been there, but it had been taken out before. He looked and did not find any indication whatsoever.

FREDERICK SEYMOUR is sworn:

Q. Mr. Seymour, what is your age? A. I am on this side of sixty.

Q. How long have you practiced law? A. I have practiced law thirty-eight years.

Q. Are you a graduate of Yale University? A. I am, in the class of '75 and in the Law School of '78.

Q. Have you held public positions? A. I live in Connecticut. I was State Senator in the deadlock session and on the Sterring Committee. I was appointed United States Commissioner of Patents by Mr. Cleveland and served four years. I have practiced patent law ever since in New York. I am a member of the bar of the United States and the State of New York and of the State of Connecticut.

Q. If you must say it yourself, you are a man whose reputation has never been touched and have lived in the practice of the profession all these years without question and without suspicion? A. Yes. I want to say that I will spend the rest of my life in finding out the principal who said that we are under suspicion on any question of criminal operations ever having a shadow on entrance in our office.

AFTERNOON SESSION.

WEDNESDAY AFTERNOON, MAY 17, 1916.

FREDERICK SEYMOUR is sworn:

Q. Mr. Seymour, you are a member of the law firm of Seymour & Seymour, are you? A. I am.

Q. It was your brother that was a witness here this morning, I believe? A. Yes.

Q. How long have you been practicing law? A. Since 1883, altogether, in the City of New York.

Q. What line of business have you followed in the law? A. General practice, but largely to do with corporations.

Q. What is your first name? A. Frederick Seymour.

Q. I understand, Mr. Seymour, that you are willing to make a complete statement and answer any questions that may be put

regarding the matter of your wires? A. I am willing to make a complete statement so far as matters concern me personally, but I shall not care to disclose matters affecting my clients.

Q. That is the usual lawyer's position. We are perfectly in accordance with that.

Senator Thompson.— I understand that in justice to Mr. Seymour and his brother that Mr. Seymour, who was before this Committee before, came on his own volition. The Committee did not send for him.

Mr. Moss.— Not exactly that. He was invited by telephone to come here, but his going upon the stand was not compelled by any process.

Senator Thompson.— I simply say that because it was stated to me that Mr. Seymour did not desire to have it known that his wires were tapped or something of that sort.

Mr. Moss.— I do not think he has made any such statement. This matter has been in the newspapers before. It was opened up by the newspapers about three weeks ago, was it not?

A. Yes.

Q. There is nothing in this matter except the facts? Mr. Seymour, realizing the desire that you have not to involve your clients' business in any statement that you make and understanding that you are here not under any subpoena, but rather on your way to the district attorney's office, and that you have the permission of Judge Swann to stay here before you go to him, I am going to ask you in your own way to state that you know and what you learned in your office concerning interference, wire tapping — all about it? A. About three or four weeks ago a representative or employee of O'Farrell's Detective Agency came into the office and said that my telephone wire was tapped and that there was a detectaphone in my private office. I turned him loose in my own office to find the detectaphone if possible, but he was unable to find any indications of it. There were two of them and they were there for an hour or so. They persisted in saying that it had been installed by Burns Detective Agency. They came back on the following day and they were there for three hours without find-

ing any evidence of a detectaphone. I treated the matter rather lightly at that time. I thought they were mistaken, and up to the present time there has been no indication developed in the office that a detectaphone was installed there or that the wires were tapped. There are witnesses who say that they have seen the detectaphone there or saw it installed.

Q. You have control of the names of these witnesses? A. The district attorney, I think, has the names of all the witnesses.

Q. Someone furnished those names to him? A. Yes. I think they are principally from the O'Farrell office. The matter was almost forgotten until the newspapers took it up about three weeks ago. Since that time I have devoted my efforts, not to running down Burns or anybody else, but to find the people who paid for doing it. And that is my sole purpose now, to find those people. I have some evidence, but not such as I ought to produce here, because it would involve names against whom I have no conclusive proof.

Senator Thompson.— Have you been to see the police commissioner?

A. I have not.

Mr. Moss.—Well, so far as you have any light upon this operation, does it involve any crime; any crime that the detectives or police might be spying upon by tapping your wires?

A. I do not know of anything, and I am sure there is nothing in my office or in the office of the firm of Seymour & Seymour of a criminal nature. There are no criminal cases there. There are no civil cases which involve of any conduct which would lead anyone to suspect a crime. I know there is nothing there in which any crimes are involved, directly or indirectly.

Q. From all the inquiries that you have made, without going into them particularly at all, would they indicate to you, so far as you have gone, that the matter was entirely of a commercial or business nature; there is no other motive? A. There is no other motive that I can think of except a commercial or business motive.

Q. And could there be a business or commercial motive in the operation? A. Yes.

Q. There could be? A. Yes.

Q. I think that is as far as I care to question the witness, Mr. Chairman.

Is there anything that you care to add to your statement? A. I think not.

Senator Thompson.— If the Committee desired, would you be willing to come before us later?

A. At your pleasure.

Mr. Moss.— That is as far, Mr. Chairman, as we are prepared this afternoon to go into the subject of wire tapping.

Senator Thompson.— There will be an executive session at half-past four.

Mr. Moss.— Is Mr. Tench present?

A. Yes.

Q. Will you step forward, Mr. Tench? There is just a question or two that I want to ask of you. What was your percentage bid on this third-tracking contract? A. Fifteen and one-half per cent.

Q. Mr. Gillespie says as fifteen per cent and Snare & Triest was shown as fifteen and three-quarters. Did you gentlemen have any conversations before those bids were put in as to the amount of percentage you would charge? A. No, sir.

Q. You did converse together before your bids were put in, did you not? A. Oh, yes.

Q. What did you converse about? A. We conversed about the invitations to bid, the work to be done, the responsibility of the work and such talk as contractors would naturally have as to the magnitude of the job. I do not remember anything further than our general talk of the work to be done.

Q. Had you been associated with any work with Mr. Gillespie before that time? A. Only in a small way in selling him material.

Q. How long had you been selling him material? A. I could not say. It was only in a small way.

Q. Several years? A. It might have been. I do not remember at all.

Q. Had you taken any contracts from him by assignment before that time? A. No.

Q. Have you had any business relations with him since that time? A. We have had bids together; we have done no work.

Q. Have you made joint bids? A. No.

Q. Have you taken any contracts by assignment or any contract? A. No.

Q. Have you done any work upon any contract which the Gillespies originally had? A. Not that I remember.

Q. Can you explain how it was that you three persons, three concerns, estimated so closely as fifteen, fifteen and a half, and fifteen and three-quarters? A. I can't say why at all. It just happened so. There is nothing that would give us any reason for it.

Senator Thompson.—Who of your firm wrote your bid?

A. We did it among us. I do not know whether I signed the order or not.

Mr. Moss.—Did you know what the Gillespie bid was going to be before it was made? A. No, sir, I did not.

Q. You would have been willing to have taken that contract at fifteen per cent, would you not? A. I could not answer that now. If it had been offered to us at fifteen per cent we probably would have taken it.

Q. Were you bidding in order to get it? A. Yes.

Q. Were you trying to bid lower than Gillespie? A. We were bidding to get the work.

Q. Lower than Gillespie? A. Not necessarily.

Q. You knew he was going to bid; were you trying to bid lower than he? A. Yes.

Q. Why did you not bid the lowest figure upon which you could afford to take it? A. I do not know that I can answer that.

Senator Thompson.—The work that you did you did for a good deal less? A. Yes.

Q. You did the most difficult part of the work in the whole contract that you bid on? A. I could not say that.

Q. You did the part that was in the most traffic? A. We did it together with Gillespie.

Q. What did Gillespie do? A. He provided all the work of getting out the plan, organizing the material and arranging for the coming through the shops and provided the pay-roll.

Senator Thompson.—What did that have to do with taking care of traffic?

A. As I say, we were jointly together.

Senator Thompson.—You yourself did the most dangerous part of the work?

A. They were responsible.

Q. How were they responsible? The fact that they ordered the material did not have anything to do with taking care of the traffic; the fact that they dug foundations did not take care of the traffic; what did they do that took care of the traffic? What did Gillespie do about that? What did he do? A. He joined with us.

Q. Did he boss the work? A. No; our employees bossed the work.

Senator Thompson.— I would like to know what Gillespie did do about taking care of this situation.

A. They did the same as we did. They were jointly responsible with them.

Q. What did the employees do? A. He was the executive and had the power to say what we were to do.

Q. What did they say about it? A. I do not think he got out on the structure and said you can do this this way.

Q. Did any of his engineers do that? A. The engineers were employed by ourselves and by the Gillespie Company; those that were not employed by the Interborough.

Senator Thompson.—The work was done under the supervision of Mr. Pegram of the Interborough Company?

A. He was not out giving instructions. Mr. Gardner was the man that was on the work.

Q. Who was Mr. Gardner? A. He was the engineer on the job.

Q. Employed by whom? A. The Interborough.

Q. Well, did your firm do about eighty per cent of the work? A. Jointly with Gillespie.

Q. I know, but you did it? A. (Witness instructed not to answer.)

Senator Thompson.— Just tell what you did; what did you do?

A. I can't answer that question.

Q. Can you send somebody here of your firm that can tell what you people did? A. They can tell just the same as I can.

Q. Tell what you did and what you did not do with Gillespie. A. According to our contract. I do not see how I can tell you anything else.

Q. What did you do? You can tell that. Anybody else could tell it. You could tell us when you were here before. A. If you look up the record, you will see it is the same.

Senator Thompson.—Tell us just what you did.

A. Our foreman employed the men and the joint account took care of the charges. I can't tell you that it was done under anything but that it was done under our contract with Gillespie.

Senator Thompson.—We would like to know what your firm did.

A. We laid out the plan of procedure for carrying on the work. It was carried on, as I tell you.

Q. We want what you did. We know that Gillespie kept the books and furnished the pay-rolls. We know all that. We know that he paid for the supplies, for the materials. Now, tell what you did. A. We did the work together, is the only thing I can say.

Q. Now, let us refer the witness back to his testimony, page 612: "Of the entire work, it was proposed that our company would do approximately 75 per cent, that Snare & Triest would do between 15 per cent and 20 per cent, that Gillespie would do the balance, each company to furnish its own plants." Now, what was the 75 per cent that you were to do? A. After that we made an agreement with Gillespie by which we joined our work with his.

Senator Thompson.—That was not the agreement at all.

A. I have not got the agreement here, but that is what it was.

Senator Thompson.—Well, that is not so.

A. The plant was to be charged to the joint account, Gillespie and ourselves.

Senator Thompson.—Why do you sit here and continuously say, "Together with Gillespie"? You did not talk that way when you were here before. Did somebody ask you to keep saying that when you came on the stand before?

A. I am telling you just what I told you before. That answer was with regard to the original contract by which we were to undertake to do certain portions of the work, before we made a contract to do our work with Gillespie, joining together.

Q. Now, you say that you did some work together; what was the work you say you did together? A. The erection of the steel, south of One Hundred and Forty-seventh street, on Second and Third avenues, and the erection of the steel on Ninth avenue with the exception of four stations, together with the foundation work on those sections.

Q. What part of the steel did Gillespie put up? A. Well, our men put up the steel, the men that we employed, under our foreman.

Senator Thompson.—Then, Gillespie did not do any of it, did he?

A. He was just as responsible for the hiring of those men as we were.

Senator Thompson.—What did Gillespie do about putting up the steel?

A. The men put it up. He did not put it up.

Senator Thompson.—You employed the men to put it up and it was your men that did it?

A. No; they were employed by the joint account.

Q. Who hired them? A. The superintendent and the foremen on the different sections.

Q. Who hired the superintendent and foremen? A. The superintendent was one of them — was a man that worked for us.

Q. Did you hire him? A. Gillespie and ourselves submitted him to Mr. Gardner.

Q. How did you do it and when did you do it? A. Before we started the work.

Q. Was he working for you then? A. One of them was and one was not.

Q. Who hired the other man? A. We did not hire them. Of course, we only realized that we ourselves were employees and did as the railroad employees told us to do.

Q. You made an agreement with Mr. Gillespie which let him in on the profits, did you not? A. Yes.

Q. What proportion of the profits on that steel work were his? A. The original contract was let at fifteen per cent.

Q. He kept five per cent for general supervision? A. Yes. And he got half of the balance.

Q. And you were called in as men expert in steel work, were you not? A. Yes.

Q. That was the reason that you were wanted, was it not? A. That is what Mr. Shonts said.

Q. You were called in because of facilities that you were supposed to have in steel construction, experience and knowledge? A. I suppose so; I don't know. Mr. Shonts said that

Q. Who would know better than he? A. Well, we had done lots of work for him before.

Q. Mr. Gillespie was not looked upon as a man experienced in steel construction, was he? A. I could not answer that. I don't know what other people thought of him.

Q. How did you think of him on steel construction? A. I knew he had done a large amount of contract work; I did not know anything about the steel work.

Q. Did he not devote himself especially to foundation work? A. I don't know.

Q. Did not you put your steel work on foundations? A. Yes.

Q. Did not he do the foundation work? A. He did it jointly with us.

Q. Did you do it too? A. The joint account did the foundation work.

Q. The account did not do it; whose men did it? A. We were all employees of the Interborough.

Q. Out of whose plant? A. Out of the joint account plant.

Q. Where was this joint account plant? A. Spread all over the job.

Q. Did you not have a headquarters? A. Yes.

Q. You have had headquarters for years, have you not? A. Yes.

Q. Did you not use your headquarters? A. Not in connection with that work.

Q. Did you not take men from your own plant? A. No.

Q. Did you have a plant before you did this work? A. Yes, a small plant.

Q. Did any of the men that you used in this work come out of that plant? A. No, not at all.

Q. Had you employed them before? A. Lots of them.

Q. Did they come out of your organization? A. Some of them, many of them.

Q. Most of them? A. Well, we hired them as we needed them.

Q. Did not the most important men come of your organization? A. One superintendent came out of our organization; the other one did not.

Q. You employed him; you found him? A. Yes; he had worked for us years before.

Q. Exactly, a man suited to your ways. Did any of the men working on the steel job come out of Gillespie's organization? A. Not any of the men working on the structure itself that I recollect.

Q. Did you go on the structure itself while you were at work? A. Frequently.

Q. What did you do? A. Just looked on.

Q. Did you give any directions? A. No.

Q. Who did give directions? A. Our superintendent.

Q. The superintendent that had been with you before? A. Yes, subject to the instructions given him by the engineers of the Interborough, generally speaking, sometimes by the Public Service.

Q. Did any of the foundation men come out of your organization? A. I could not say offhand.

Q. Do you remember any that did? A. No, I don't remember any.

Q. Did you have anything to do with the work that Snare & Triest did? A. No.

Q. Was there absolutely no connection between your work and their work? A. Yes.

Q. That is, you did not come in contact with them at any point? A. Further than at the giving of the job when the policy of ordering the steel was being considered, that was the only thing in which we came together.

Q. Did you get any of the profits of the foundation work? A. Yes.

Q. What proportion of these profits did you get? A. One-half of ten per cent.

Q. Do you remember the cost of the foundation work? A. No.

Q. Was it about $1,000,000? A. It was about $1,000,000.

Q. The contract limits it to about that figure? A. There was not any limit in the contract as to the cost of the foundation work that I recollect. I am very positive that there was none.

Q. I want to read in the evidence at this point from the contract which is dated February 13, 1914, between the Interborough and Terry & Tench, Snare & Triest and Gillespie. "The actual and necessary costs shall include, (a) The sums actually and necessarily paid by the contractors for all labor and materials entering into the construction herein provided for. (b) The sums actually and necessarily paid by the contractors for superintendents, rents of field offices, lights, engineering and legal expenses. (c) The sums actually and necessarily paid by the contractors for such insurance or indemnity as the company may prescribe or as the contractors may otherwise deem proper, but not including any premium on the bond given as security. No contractor's percentage shall be allowed for such sums. (d) Expenditures necessarily incurred for discharging, arising from negligence or otherwise, by the company, the contractors or whomsoever done, or at the option of the company the contracts will be turned over to the law department of the company for adjustment. No contractor's percentage

shall be allowed on expenditures in payments for injuries to persons or property." Now, I spoke of the foundation work being limited to $1,000,000. I find it in the memorandum of agreement dated the 13th of February, 1914, between the Terry & Tench Company of the first part and the T. A. Gillespie Company of the second part,

Whereas, a contract has been entered into this day between the Terry & Tench Company, Snare & Triest, and the T. A. Gillespie Company for the Interborough Rapid Transit Company, now therefore, it is agreed that outside of the portion of the work done by the Snare & Triest Company, the T. A. Gillespie Company will do the foundation work amounting to, but not exceeding, $1,000,000, and all the balance of the work to be done jointly by either, and one-third to the T. A. Gillespie Company.

The Terry & Tench Company are to furnish the working capital for the same, and all of this work to be done on the basis of cost plus ten per cent and in accordance with the joint contract made by the Terry & Tench Company, etc.

That was modified by an agreement dated the 25th day of February as follows:

It recites the first contract with the company and goes on: Now, therefore, for the purpose of a determination as to the division of the profits on the above work, it is hereby mutually agreed that the Gillespie Company is to receive forty-three per cent, and if the elevated work which is to be done by the Terry & Tench Company, Inc., each one supplying the plant for his own work, the Gillespie Company to supply the necessary finances.

The above percentage is to be applied on the ten per cent of the cost, plus ten per cent referred to in the joint contract between the companies and the Interborough Rapid Transit Company, dated February 13, 1915.

Q. You have attended to the reading of these agreements, have you not? A. Yes.

Q. These agreements are agreements which arranged for the division of the work and distribution of the profits, are they not? A. Yes.

Q. Was the foundation work limited to $1,000,000? A. No.

Q. Was it not the by-agreement which I read to you? A. No.

Q. The Gillespie Company will do the work amounting to, but not exceeding, $1,000,000? Between yourselves was there a limit of $1,000,000? A. Yes.

Q. Now, under this modified agreement dated February 20, it is mutually agreed that the profits on the foundation work which is to be done by the Gillespie Company, etc., be divided in a certain way, with the Gillespie Company to do the foundation work? A. Yes.

Q. You said a few minutes ago that you and they were to do the work. There was never any money paid on that contract. It recites as a fact there that the foundation work was to be done by the Gillespie Company? A. Yes.

Q. It was done by the Gillespie Company? A. It was done by the joint account.

Q. It was done by the Gillespie Company, was it not? You are not going back on your own recital, are you? A. Not at all.

Q. Was not the foundation work done by the Gillespie Company?

Senator Thompson.— You have gone far enough with that. Now, tell us the facts.

A. The actual work was done by the employees of the two companies.

Senator Thompson.— It was not either, that is entirely contrary to your testimony when you were on the stand before.

Q. Did you personally do any foundation work? A. No.

Q. Did your own superintendent do any foundation work? A. I think they did some together with the superintendent that Mr. Gillespie had.

Q. What did he do? A. Some of the work which the steel work was dependent upon, necessary to hurry it along.

Q. What was the name of that superintendent? A. His name was Coppage.

Q. It was only to go down there and look and give his consent and approval? A. Yes.

Q. They worked together on the work? A. Yes.

Q. You did not look upon yourself as a foundation man? A. Why not? We did lots of foundation work.

Q. But your specialty was steel work. A. Yes.

Q. Was the object of this arrangement to assemble several experts in this line? A. Yes.

Q. Were you looked upon as a specialist in steel work? A. Yes.

Q. And the contract having gone to Gillespie, the object as you understood it of Mr. Shonts was to have his ability supplemented by men who were specialists in steel? A. The contract went to the three contractors jointly and did not go to ——

Q. He had the least bid, did he not? A. Yes.

Q. And he was requested to enter into an agreement? A. That is what Mr. Shonts said.

Q. Being the successful bidder he was requested to enter into a contract with other bidders so that your ability might be brought in? A. I knew it when Mr. Shonts said it.

Q. They did not look upon Mr. Gillespie as experienced enough to handle the steel work? A. I could not tell why.

Q. You were perfectly willing to do it for fifteen per cent? A. Yes.

Q. You took the responsibility for the steel work, did you not? A. Yes.

Q. You say you and Gillespie together did all this work and you were willing to do all that together at fifteen per cent if you had to. I would like to know why you did not bid fifteen per cent in the beginning. A. Our contract is fifteen per cent.

Senator Thompson.— And all you had anything to do with was the ten per cent, was it not?

A. Our contract jointly was for fifteen per cent.

Q. This agreement of the 20th of February recites that the elevated work is to be done by the Terry & Tench Company, each one supplying the plant for his own work. Was that done? A. No, it was not, there was another contract after that by which the plant was supplied by the two companies together.

Q. We will take an agreement dated the 17th of June. I don't find the one you referred to, but we will take this one: Whereas, the parties are negotiating for a contract with the Interborough Rapid Transit Company or the Manhattan and being a contract other than the contract of February 14, and whereas it is proposed that the contract may be made in the name of one of the parties herewith, now, therefore, the parties in consideration agree:

(1) The party of the second part agrees to relieve the party of the first part from any responsibility in connection with any bond to be furnished in securing said contract, and it goes on with reference,— but I won't read this further. Observe that it recognizes this agreement that I have been talking to you about.

A. I have not seen that contract for some time. Will you let me look at it?

(Mr. Moss hands Mr. Tench the contract).

Q. Other than you have already testified, you cannot explain how it happened that you gentlemen came to make those fractional bids so close to each other and that you happened so soon to go in together upon the lowest bid in the name of Gillespie. The lowest bid was in the name of Gillespie, was it not? A. I understood so.

Q. Can you explain any more than you have how it happened that you made these closely approximating bids and so closely thereafter took up Mr. Gillespie's bid and all went in on it, dividing it between you? A. Not any further than Mr. Shonts told Mr. Gillespie that he wanted Snare & Triest to get it together.

Q. Did you understand that the contract would have to include Mr. Gillespie? A. No, I did not. Mr. Shonts told us when we delivered our bid that he was very much in favor of our having the work. There was no reference whatever to Mr. Gillespie.

Q. At the time you deposited the bid, Mr. Shonts told you he was very much in favor of your securing the job? A. Yes.

Senator Thompson.—Why?

A. He said on the stand, as I remember it.

Q. What did he tell you? A. Nothing further than that.

Q. Did he tell you why? A. No.

Q. Why did you think he wanted it? A. Because we had given him satisfaction in other contracts.

Q. What kind? A. Building elevated railroads and changing one in particular which was considered a very difficult piece of work.

Q. Your firm has done that? A. Yes.

Q. Did not you have Mr. Gillespie around to help you and tell you how to do it? A. No.

Q. You did not have Gillespie in that other work? A. No.

Q. How in the world did you ever get along with it? A. We did it satisfactorily.

Q. Do you think that is the reason Shonts wanted you again? A. Because we had done work that was satisfactory to him.

Q. But you got along that time without being connected with Gillespie at all? A. That was a small piece.

Q. If you had taken the contract you would have fully filled it, would you not? A. I could not tell you that.

Q. You expected to take the whole thing, did you not? A. Yes.

Q. And you expected to employ men to do all the things you needed to have done for you? A. Yes.

Q. And if you had taken the contract, why you would have had the five per cent for general supervision and not Gillespie? A. That is a very difficult thing to answer. We would probably have done as a good many contractors do where there is so much money required. It would have required a bank to finance it.

Q. Could you not have gone to a bank and gotten the money you needed? A. No.

Q. What do you think was Mr. Gillespie's special ability in financing? A. He was supposed to be a very wealthy man.

Q. Was that what Mr. Shonts looked at? A. I could not say.

Q. Did you know whether or not Mr. Gillespie was particularly concerned with financial interests? A. No.

Q. Did you know of Mr. Gillespie's relations with Mr. Davidson? A. No.

Q. Did you talk with Mr. Gillespie about how this contract would be financed? A. Yes.

Q. What did he say to you? A. That he would finance it.

Q. Were you satisfied that he could do it? A. Yes.

Q. Could not you have gotten the same help? A. I could not say.

Q. You could have tried, could you not? A. Yes.

Q. You expected to do it when you bid? A. We felt reasonably certain that we could carry it through.

Q. When you accepted this relation with Mr. Gillespie, did you know he was a director in the Equitable? A. I did not.

Q. Did you know he was a director in the Liberty Bank? A. I knew that six months afterwards.

Q. Did you know that he had interests in the Guarantee Trust Company? A. I did not.

Q. Did you know he was interested in the Gun Hill Realty Company? A. I did not.

Q. You did not then look very deeply into his financial ability, did you? A. I did not feel that it was necessary further than what I knew of him.

Q. Did you have a suggestion from Mr. Shonts or anybody else that it would be a good thing to have him associated with you? A. No.

Senator Thompson.—What did you know of him?

A. I knew of the difficult work he had carried through where we had sold his material.

Q. What work was that? A. One of the large contracts on the Park Canal and on the Catskill Water Supply, where he had done contracts running several millions of dollars.

Q. Is that all you knew about him? A. No, I knew of his being associated in large pipe contracts on Long Island and New Jersey, and in a general way I knew about him further than that.

Q. What else? A. I can't tell you anything else.

Q. That is all that you relied on when you went in with him? A. As far as I remember.

Q. You yourself handled the contract for the Grand Central Depot, did you not? A. Yes.

Q. How much did that involve? A. I suppose we did a couple of million dollars worth of work there.

Q. Did you understand that Mr. Shonts wanted you to be associated with Mr. Gillespie? A. No.

Q. Did the proposition come entirely from Mr. Gillespie? A. Yes.

Q. Did he come to you and ask you to go in? A. He came to us after the bids went in.

Q. Did he tell you that Shonts wanted it? A. No, we might have driven a strong bargain with him possibly if he had. We were relieved entirely of all financial obligations when Mr. Gillespie made the proposition for us to go in together.

Q. Did you not look upon this as a case where the only way you could get into this thing was in connection with Gillespie? A. I imagine I may have thought so at that time because he was the low bidder, as we were advised.

Q. Is that the only reason? A. I had no cause for thinking anything else.

Q. Didn't you make your bid a half per cent higher than Gillespie's in order to be counted in, but not so close as to count him out? A. No, I have stated that I did not before.

Q. I have here a memorandum agreement dated the 13th of February, between you and the Snare & Triest Company and Mr. Gillespie, which recites the contract, and you desire to determine your several duties, responsibilities and interests and to arrange for a comprehensive and uniform plan to carry out the work, and it agrees, first, that the Gillespie Company is constituted the general administrator of the entire work, with authority to represent all of the parties hereto with the Interborough Rapid Transit Company in everything relating to said contract, to procure the necessary insurance, permits, licenses, to present estimates from time to time, to receive all sums which all or any of the said contracts may be entitled to receive under said contracts and generally to manage and administer the entire contract and the work to be done thereunder. And it was for that that the Gillespie Company was to receive one-third of the percentage of fifteen per cent. Does not that represent all that Mr. Gillespie or the Gillespie concern was to do? A. Yes. They had complete control of the work by that.

Q. There is nothing more giving them control of the work than this paper that I have read? A. Excepting in the original contract that provides for it. I mean in the one for the 13th.

Q. Yes, but this contract dated the 20th is the one which relates to the Gillespie as doing the foundation work and yourselves as doing the steel work? A. Yes, but it was altogether subject to the control of the Gillespie Company.

Q. The control which I have read to you now out of this agreement of the 13th? A. There is another contract that you have not got there.

Q. That was the way it divided up, you looking out for the elevated work and Gillespie for the foundation work? A. Yes.

Q. Mr. Sinclair, I want to ask a question of you. Mr. Sinclair testified yesterday that he had made an examination of the books of the T. A. Gillespie Company and he hands me the reports which he drew for us. The statements which you call to my attention on page 5 represents your examination of the books, do they, so far as these statements go? A. Principally prepared from their own auditors' reports.

Q. The cost of the contract of December 31, 1915, in Exhibit B is shown the cost of the various sections, and the amounts of the various expense accounts that were charged to construction. These figures were taken from the auditor's general statement of expenditures as of December 3, 1915, and the total cost of over $8,639,000 is in agreement with the amount shown in the balance sheet. This includes miscellaneous construction expense, includes portable steel buildings for materials, blacksmith shops, etc. It includes office equipment, that including desks, chairs, tables, typewriters, adding machines, filing cabinets, etc. It includes legal expenses, legal expenses comprising sundry payments to Griggs, Baldwin & Baldwin, amounting to $16,050. It includes an automobile account. This account includes in addition to expenses the cost of a seven-passenger Chalmers touring car. And by reference to Exhibit B, out of this total at December 31, 1915, $8,323,000, plus, it is divided into labor of $3,699,000, plus, engineering and superintendents, $141,920, plus, into supplies of $1,659,000, plus, into steel of $2,813,000, plus, and into other expenses of $325,503, plus. These other expenses include

engineering and superintendents, $13,000, plus. General office expense, salaries, $73,000, plus, and supplies, $16,000, plus, engineering superintendents salaries, $8,000, plus, stationery and printing, $11,000, plus, office equipment, $6,000, plus, legal expenses, $16,050, and automobile expense, $4,100.65.

MR. THOMAS A. GILLESPIE is sworn:

Q. Mr. Gillespie, were you able to get for me the figures for paragraph 6 and that I requested? A. It would just take ten men for six months. Your auditors have been there and they have seen it and you might just ask the witness that left the stand. There are some fourteen thousand vouchers.

Q. What about the other one? A. I can give you that. You asked about that International Bank, well, there is an item, I will show you the check book if you want it.

Q. This covers the $129,000 item out of the Liberty Bank? A. Yes.

Q. In explanation of this paper which the witness just hands me, his testimony yesterday showed that of the money paid by the Interborough Company upon this contract, $129,329.83 was deposited on May 19, 1915, in the witness' account in the Liberty National Bank. The witness hands me a paper showing the disbursements from that deposit, but the disbursements which you hand me figure up $133,000. A. I will tell you there were deposits made the next day.

Q. So that it became mixed up? A. It became mixed up, I can show you the check book. Commencing after that date, Mr. Moss, as near as we can figure it, that is what it is.

Q. The checks which you handed me a memorandum of, $133,000, are checks following the deposit of $129,000 which you say used it over and overlapped. A. Yes.

Q. You treated this $129,000 then as your own money? A. Certainly.

Q. This was a portion of your profits? A. Yes.

Q. Or of the profits of your concern? A. Yes.

Q. And after this it would appear that you forwarded to the Pittsburg office on May 25 $25,000. A. Yes.

Q. That is right, is it? A. Yes, that is in the statement that I gave the Chairman last night.

Q. Well then, $25,000 of the $129,000 that you deposited in the Liberty Bank went straight over to the Pittsburg account and was transmitted to Pittsburg? A. Yes.

Q. And the balance of that $129,000 you used as your own personal profit in disposing of matters of your own, individually? A. Yes.

Q. The T. A. Gillespie Company account? A. Yes.

Q. I meant that he treated the profits as coming to his concern. That is right, is it not? A. Yes.

Q. What is the meaning of this item, T. A. C.? A. That is personal.

Q. Now, I asked you about the other moneys which you deposited I think in the Guarantee account. The moneys which I am now asking the witness about are the profits of the T. A. Gillespie Company, retained out of the third contract and I have asked the witness to show us how he disbursed those retained profits. A. I did not understand that, I thought it was to show the disbursements in the Guarantee Trust Company.

Q. But your profits went into that account, did they not? A. Oh, yes, all checks from the Interborough went into that.

Q. And I want you to show by your checks what you did with the profits that you retained for your concern out of the moneys which you deposited with the Guarantee Trust Company. A. Perhaps I did not understand the question.

Q. Now, I suppose some of those checks were drawn directly to your firm, the T. A. Gillespie Company, were they? A. They were all drawn to the T. A. Gillespie Company.

Q. How did you get your personal profit out of that special account? A. I suppose when there was some profit there, we took it out.

Q. Now, in what form? A. I did not understand your letter to mean that and I don't know.

Q. I will try to find it for you. This is the history of the entire transaction in the Guarantee Trust Company. A. Of course, if it is necessary to go through the entire transaction, that will necessarily take some time.

Q. But you have not gone through it in this way. I don't care at this time to overhaul this whole special account, all I am interested in is the eight hundred odd thousand dollars of profit that the Gillespie concern had in this business and I want to see how that eight hundred thousand dollars was gotten out of the special account. He has already shown us $129,000, which went through the Liberty Bank, but I want to get segregated from that big account the profits and see how it went through his hands and where he sent it. Whatever it was, it seems to me a very simple proposition. Mr. Gillespie's firm handles the funds, they received the checks from the Interborough Company and disbursed all those checks. Necessarily they contained the profits of Snare & Triest, Terry & Tench and the T. A. Gillespie Company and in order to get your profits out of that special account, the checks for your profit must have been drawn on your account and deposited somewhere. A. I am perfectly willing that they should be gone through.

Q. Has that account been closed out? A. No, it has not.

Q. Are your profits represented in the balance of that account? A. Yes.

Q. What is the balance of that account? A. $300,000 to $400,000. The final balance has not yet been paid to us.

Senator Thompson.— How much is back from the payments?

A. When it is due there will be about $300,000 to $400,000.

Senator Thompson.— That statement then that you made yesterday?

A. It was based on the thing being closed up.

Senator Thompson.— The statement of $10,300,000 is a statement not of the exact condition now, but as it will be when you get the payments settled with Terry & Tench and Snare & Triest and the Interborough Railroad Company.

Q. Has the entire profit of Snare & Triest been paid to them? A. No, sir.

Q. How much is lacking? A. Well, I could not tell you offhand, perhaps $50,000 or $60,000.